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

NOVATION AGREEMENT

THIS NOVATION AGREEMENT ("Novation") is made as of August 1, 2024, in San Francisco, California, by and between CCT Technologies, Inc. dba ComputerLand of Silicon Valley, a corporation duly organized and existing under the laws of the State of California with its principal office in San Jose, California ("Transferor"), ISSQUARED, Inc. dba Computerland of Silicon Valley, a corporation duly organized and existing under the laws of the State of California with its principal office in Westlake Village, California ("Transferee"), and City and County of San Francisco, a municipal corporation ("City").

Recitals

WHEREAS, Transferor is a party to the Agreement (as defined below); and

WHEREAS, Transferor desires to transfer the Agreement, and Transferee desires to assume the Agreement in full, each on the terms and conditions set forth herein; and

WHEREAS, Transferor warrants that Transferee is able to fully perform all obligations that may exist under the Agreement, and

WHEREAS, Transferee warrants that it is able to fully perform all obligations that may exist under this Agreement, and

WHEREAS, it is consistent with the City's interest to recognize the Transferee as the successor party to the Agreement, and

WHEREAS, Transferor has transferred to the Transferee all the assets of the Transferor that are used for the performance of the Agreement and documents evidencing of the above transfer has been filed with the City, and

WHEREAS, the City consents to the transfer of the Agreement based on Transferor's warranties stated herein and under the terms below.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained in this Novation, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Transferor and Transferee agree as follows:

Article 1 Definitions

The following definitions apply to this Novation:

1.1 "Agreement" means the agreement dated January 19, 2024 between Transferor and City and County of San Francisco, a municipal corporation. The Agreement is attached to

this Novation as Appendix A and Transferee confirms that terms of the Agreement, including pricing, will remain unchanged.

1.2 "Effective Date" means May 1, 2024.

1.3 **San Francisco Labor and Employment Code.** As of January 4, 2024, San Francisco Administrative Code Chapters 21C (Miscellaneous Prevailing Wage Requirements), 12B (Nondiscrimination in Contracts), 12C (Nondiscrimination in Property Contracts), 12K (Salary History), 12P (Minimum Compensation Ordinance), 12Q (Health Care Accountability Ordinance), 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions), and 12U (Sweatfree Contracting) are redesignated as Articles 102 (Miscellaneous Prevailing Wage Requirements), 131 (Nondiscrimination in Contracts), 132 (Nondiscrimination in Property Contracts), 141 (Salary History), 111 (Minimum Compensation), 121 (Health Care Accountability), 142 (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions), and 151 (Sweatfree Contracting) of the San Francisco Labor and Employment Code, respectively. Wherever this Agreement refers to San Francisco Administrative Code Chapters 21C, 12B, 12C, 12K, 12P, 12Q, 12T, and 12U, it shall be construed to mean San Francisco Labor and Employment Code Articles 102, 131, 132, 141, 111, 121, 142, and 151, respectively.

1.4 Other terms used and not defined in this Novation shall have the meanings assigned to such terms in the Agreement.

Article 2 Transfer of Agreement

2.1 **Transfer.** Transferor hereby assigns, transfers, and conveys to Transferee all of Transferor's rights, title, and interest in and to the Agreement and all of Transferor's duties and obligations thereunder.

2.2 **Acceptance.** Transferee hereby accepts the transfer and conveyance set forth in Article 2.1 and agrees to perform all of Transferor's duties and obligations under the Agreement, including Transferee assuming liability for all Technology Marketplace Transactions and Purchase Orders issued under the Agreement from January 19, 2024 to the date this Novation is executed.

2.3 **Rights to Enforce**. Subject to the terms of the Agreement, this Novation shall be binding upon, and inure to the benefit of, the parties hereto and their successors and transferees. Nothing in this Novation, whether express or implied, shall be construed to give any person or entity (other than City and the parties hereto and their respective successors and Transferees) any legal or equitable right, remedy, or claim under or in respect of this Novation or any covenants, conditions, or provisions contained herein.

2.4 **Consent of City.** Transferor and Transferee acknowledge that the prior written consent of City to this Novation is required under the terms of the Agreement. City consents to the transfer described in this Article 2 based on the evidence provided below, which indicates that Transferee is able to fully perform all obligations that may and will exist under the Agreement. All the evidence is attached to this Novation as Appendix B.

2.4.1 An authenticated copy of instrument effecting the transaction between the Transferor and Transferee, together with attorney opinion letters with a statement that the transaction was properly affected under the applicable state law.

2.4.2 An authenticated copy of the Transferee's certificate and articles of incorporation.

2.5 **Successor.** City recognizes the Transferee as the Transferor's successor in interest in and to the Agreement. The Transferee by this Novation becomes liable for all responsibilities and entitled to all rights, titles, and interests of the Transferor in and to the Agreement**.** City will treat the Transferee as if the Transferee were the original party to the Agreement. Following the Novation, the term "Contractor," as used in the Agreement, shall refer to the Transferee. The Agreement shall remain in full force and effect, except as modified by this Novation. Each party has executed this Novation as of the day and year first above written.

2.6 **Further Assurances.** From and after the date of this Novation, Transferor and Transferee agree to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper, and usual to complete the conveyance contemplated by this Novation or as may be required by City.

Article 3 Obligations and Liabilities

3.1 **Transfer, Waiver, and Assumption.** The Transferor confirms the transfer to the Transferee, and waives any claims and rights against the City that it now has or may have in the future in connection with the Agreement. The Transferee agrees to be bound by and to perform the Agreement in accordance with the conditions contained therein. The Transferee also assumes all obligations and liabilities of, and all claims against, the Transferor under the Agreement as if the Transferee were the original party to the Agreement. The Transferee ratifies all previous actions taken by the Transferor with respect to the Agreement, with the same force and effect as if the action has been taken by the Transferee. Except as expressly provided in this Novation, nothing in it shall be construed as a waiver of any rights of the City against the Transferor.

3.2 **Past Payments.** All payments and reimbursements previously made by City to the Transferor, and all other previous actions taken by City under the Agreement, shall be considered to have discharged those parts of City's obligations thereunder. All payments and reimbursements made by City after the date of this Novation in the name of or to the Transferor shall have the same force and effect as if made to the Transferee, and shall constitute a complete discharge of City's obligations under the Agreement, to the extent of the amounts paid or reimbursed. The Transferor and the Transferee agree and confirm that City is not obligated to pay or reimburse either of them for, or otherwise give effect to, any costs, taxes, or other expenses, or any related increases, directly or indirectly arising out of or resulting from the transfer of this Novation, other than those that City in the absence of this transfer would have been obligated to pay or reimburse under the terms of the Agreement.

Article 4 Insurance and Indemnification

4.1 **Insurance Certificates.** For this Novation to be effective, Transferee shall provide to City insurance certificates and endorsements for the identical type and amount of coverage currently required under the Agreement.

4.2 **City.** Transferor and Transferee shall, to the fullest extent permitted by law, indemnify, defend and protect City, and hold City harmless from and against any and all liabilities, losses, damages, claims, costs, or expenses (including attorneys' fees) arising out of Transferor and/or Transferee's failure to comply with any term or obligation of this Novation or the Agreement. Defense obligations under this Section 4.2 shall be provided immediately following a tender of defense.

Article 5 General Provisions

5.1 **Governing Law**. This Novation shall be governed by the laws of the State of California, without regard to its conflict of laws principles.

5.2 **Headings**. All section headings and captions contained in this Novation are for reference only and shall not be considered in construing this Novation.

5.3 **Notices**. All notices, consents, directions, approvals, instructions, requests, and other communications regarding this Novation or the Agreement shall be in writing; shall be addressed to the person and address set forth below; and shall be (i) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (ii) hand delivered, or (iii) sent via email with a return receipt. All communications sent in accordance with this Section shall become effective on the date of receipt. From time to time, Transferor, Transferee or City may designate a new address for purposes of this Section by notice to the other signatories to this Novation.

To City:	Jonathan Jew, Principal Administrative Analyst Office of Contract Administration 1 Dr. Carlton B. Goodlett Place, Rm 430 San Francisco, CA 94110 jonathan.jew@sfgov.org (628) 652-1615
To Transferor:	Cathy Souza Executive Vice President CCT Technologies, Inc. dba ComputerLand of Silicon Valley 808 W San Carlos Street, Suite 20 San Jose, CA 95126 csouza@cland.com (408) 519-3230

To Transferee:	Kevin Hagen Chief Financial Officer ISSQUARED, Inc. dba Computerland of Silicon Valley 2659 Townsgate Rd, Suite 227 Westlake Village, CA 91361 khagen@issquaredinc.com (425) 452-2585

5.4 **Entire Agreement.** This Novation sets forth the entire agreement between Transferor and Transferee relating to the Agreement and supersedes all other oral or written provisions.

5.5 **Severability.** Should the application of any word, phrase, clause, sentence, paragraph, and/or provision of this Novation to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other words, phrases, clauses, sentences, paragraphs and/or provisions of this Novation shall not be affected or impaired thereby, and (ii) such words, phrases, clauses, sentences, paragraphs and/or provisions shall be enforced to the maximum extent possible so as to effect the intent of Transferor, Transferee, and City.

IN WITNESS WHEREOF, Transferor and Transferee have each duly executed this Novation as of the date first referenced above.

TRANSFEROR

CCT Technologies, Inc. dba ComputerLand of Silicon Valley
Supplier Number: 0000022410

By DocuSigned by: Cathy Souza 6A2056256CC040C...

Title EVP

TRANSFEREE

ISSQUARED, Inc. dba Computerland of Silicon Valley
Supplier Number: 0000055375

By DocuSigned by: Kevin Hagen D98E1029FD094C7...

Title CFO

City hereby consents to the transfer described in Article 2 of this Novation.

Recommended by:

By DocuSigned by: Daniel Sanchez 36604DF85002453...

Daniel Sanchez
Supervising Purchaser
Office of Contract Administration

Approved:
Sailaja Kurella
Director of the Office of Contract Administration, and Purchaser

By DocuSigned by: Sailaja Kurella 78EAEA4AB01C4E0...

Sailaja Kurella

Approved as to Form:

David Chiu
City Attorney

By DocuSigned by: 1A2698E99B824E2...

Duyen Nguyen
Deputy City Attorney

Attached:
Appendix A: Agreement
Appendix B: Documentation of Transfer

Appendix A

Agreement

The Agreement dated January 19, 2024 between Transferor and City is attached on the following one hundred thirty-seven (137) pages.

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

OCA Technology Marketplace Master Agreement for Technology Goods and Services between the City and County of San Francisco

and

CCT Technologies, Inc. dba ComputerLand of Silicon Valley

TC 99410

1000031407

AGREEMENT

This Agreement is made this 19th day of January, 2024, in the City and County of San Francisco ("City"), State of California, by and between CCT Technologies, Inc. dba ComputerLand of Silicon Valley ("Contractor") and City.

Recitals

WHEREAS, the Office of Contract Administration ("Department") wishes to procure information technology products and services on an as-needed basis through the Technology Marketplace (as defined below) from Contractor; and

WHEREAS, Contractor represents and warrants that it is qualified to deliver the Goods and perform the Services required by City as set forth under this Agreement; and

WHEREAS, Contractor was competitively selected pursuant to San Francisco Sourcing Event ID 7900; and

WHEREAS, the Local Business Entity ("LBE") subcontracting participation requirement with respect to the Services under this Agreement is eighteen percent (18%); and

WHEREAS, approval for the Agreement was obtained on September 18, 2023 from the Civil Service Commission under PSC number 44539-22/23 in the amount of $180,000,000 for the period of five (5) years; and

WHEREAS, the City's Board of Supervisors approved this Agreement by resolution number 010-24 on January 19, 2024.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and all City departments authorized to utilize this Agreement for the purpose of securing the Goods and/or Services described herein.

1.3 "City Data" means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Information.

1.4 "CMD" means the Contract Monitoring Division of the City.

1.5 "Confidential Information" means confidential City information including, but not limited to, personal identifiable information ("PII"), protected health information ("PHI"), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state, or federal laws restricting the use and disclosure of such information including, but not limited to, Article 1, section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M ("Chapter 12M").

1.6 "Contractor" or "Consultant" means Contractor as defined above and any sub-Contractor(s) providing services under this Agreement ("Sub-Contractor"), accompanying Purchase Order (as defined under Chapter 21) and corresponding documents of the services to be performed under this Agreement.

1.7 "Deliverables" means Contractor's work product resulting from the Services provided by Contractor to City during the course of Contractor's performance of the Agreement including, without limitation, the work product as described in attached Appendices and any Purchase Orders executed under this Agreement.

1.8 "Goods" or "Commodities" means the products, materials, equipment, or supplies to be provided by Contractor under this Agreement.

1.9 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.10 "Party" and "Parties" means the City and Contractor either individually or collectively.

1.11 "Purchase Order" means the authorization document designated as such by the Purchaser for a procurement resulting from a Technology Marketplace Transaction, whether

issued in a paper or electronic format, including blanket purchase orders for purchases involving multiple payments, and shall also include the scope of work for that particular purchase.

1.12 “Services” means the work performed by Contractor under this Agreement including all services, labor, supervision, maintenance, materials, equipment, actions, and other requirements to be performed and furnished by Contractor under this Agreement.

1.13 "Technology Marketplace" means a virtual marketplace comprised of the multiple award pool of contracts made available to City ordering departments and other governmental agencies and jurisdictions for the efficient and cost-effective procurement of IT Goods and Services.

1.14 "Technology Marketplace Transaction" means an event resulting in a purchase of Goods and/or Services through the Technology Marketplace.

1.15 “Term Sheet” means a document that may be attached to a Purchase Order issued under this Agreement containing terms specific to an individual purchase of Goods and Services through the Technology Marketplace.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on January 19, 2024 and expire on December 31, 2028, unless earlier terminated as otherwise provided herein.

Article 3 Financial Matters

3.1 **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 Section 3.105 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 for this Agreement.

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

3.2 **Maximum Costs.** The City’s payment obligation to Contractor cannot at any time exceed the amount certified by City’s Controller for the purpose and period stated in such certification. Absent an authorized emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, “Modification of this Agreement.”

3.3 **Compensation.**

3.3.1 **Calculation of Charges.** Contractor shall provide an invoice to the City for Goods delivered and/or Services completed in accordance with the accompanying Purchase Order and corresponding documents. Compensation shall be made for Goods and Services identified in the invoice that the City, in its sole discretion, concludes has been satisfactorily delivered and/or performed. In no event shall the amount of this Agreement exceed **TWENTY MILLION DOLLARS ($20,000,000)**. The breakdown of charges associated with this Agreement appears in the accompanying Purchase Order and corresponding documents. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services and Goods covered under this Agreement.

3.3.2 **Payment Limited to Satisfactory Services and Delivery of Goods.** Contractor is not entitled to any payments from City until City approves the Goods and Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Goods and/or cure Services provided in an unsatisfactory manner, even if the unsatisfactory character may have been apparent or detected at the time such payment was made. Goods and Services delivered pursuant to this Agreement 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 at no cost to the City.

3.3.3 **Withhold Payments.** If Contractor fails to provide Goods and Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured. Contractor shall not stop providing Goods and Services as a result of City's withholding of payments, as provided herein.

3.3.4 **Invoice Format.** Invoices furnished by Contractor under this Agreement for Goods delivered and Services performed under Purchase Orders must be in a form acceptable to the Controller and City, and include a unique invoice number and a specific invoice date. Contractor's invoices shall include detailed time sheets to support all hourly rate charges or, for fixed-price Purchase Orders, detailed list(s) of completed or partially-completed Deliverables with reference to the schedule in the scope of work. Payment shall be made by City as specified in Section 3.3.8, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of Goods delivered or Services performed, sales/use tax (if applicable), contract payment terms, and contract price. Invoices that do not include all required information or contain inaccurate information may not be processed for payment.

3.3.5 **LBE Payment and Utilization Tracking System.** If LBE Subcontracting Participation Requirements apply to a contract awarded pursuant to this Solicitation, the awarded Contractor shall: (a) within three (3) business days of City's payment of any invoice to Contractor, pay LBE subcontractors as provided under Chapter 14B.7(H)(9); and (b) within ten (10) business days of City's payment of any invoice to Contractor, confirm its payment to subcontractors using the City's Supplier Portal Payment Module, unless instructed otherwise by CMD. Failure to submit all required payment information to the City's Supplier Portal Payment Module with each payment request may result in the withholding of twenty percent (20%) of subsequent payments due. Self-Service Training is located at this link: https://sfcitypartnersfgov.org/pages/training.aspx.

3.3.6 **Getting paid by the City for Goods and Services.**

(a) The City and County of San Francisco utilizes the Paymode-X® service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b) At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system (PeopleSoft) via eSettlement. Refer to https://sfcitypartner.sfgov.org/pages/training.aspx for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through sfemployeeportalsupport@sfgov.org.

3.3.7 **Reserved (Grant Funded Contracts).**

3.3.8 **Payment Terms.**

(a) **Payment Due Date.** Unless City notifies the Contractor that a dispute exists, Payment shall be made within thirty (30) calendar days, measured from (1) the delivery of Goods and/or the rendering of Services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted electronic payment to Contractor.

(b) **Reserved (Payment Discount Terms).**

3.4 **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 the Goods and Services. Contractor will permit City to audit, examine and make copies of 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 less than five (5) years, unless required for a longer duration due to Federal, State, or local requirements of which the City will notify Contractor in writing, 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 as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code § 21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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.

3.6 **Payment of Prevailing Wages.**

3.6.1 **Covered Services.** Any Purchase Order issued under this Agreement that includes services valued in excess of one thousand dollars ($1,000) for either (a) maintenance of a public facility, or (b) installation of machinery and equipment that becomes affixed to a public facility ("Covered Services") shall be subject to California Labor Code sections 1720 and 1782, as incorporated within Section 6.22(e) of the San Francisco Administrative Code. Contractor shall pay the prevailing wage rates for the work as set by the San Francisco Board of Supervisors and the Director of the California Department of Industrial Relations ("DIR").

3.6.2 **Wage Rates.** The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors and DIR, as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Copies of the applicable prevailing wage rates are available from the Office of Labor Standards and Enforcement ("OLSE"). See also https://sf.gov/resource/2022/citywide-contractor-labor-laws. Contractor agrees that it shall pay not less than the prevailing wage rates, as determined by the Board of Supervisors and DIR, to all workers employed by Contractor who perform Covered Services under this Agreement.

3.6.3 **Subcontract Requirements.** Contractor shall insert in every subcontract made for the performance of Covered Services under this Agreement a provision that said subcontractor shall pay to all persons performing labor in connection with Covered Services not less than the highest general prevailing rate of wages as determined by the Board of Supervisors and DIR for such labor and services.

3.6.4 **Posted Notices.** As required by section 1771.4 of the California Labor Code, Contractor shall post job site notices prescribed by DIR at all job sites where Covered Services are to be performed.

3.6.5 **Payroll Records.** Contractor shall keep or cause to be kept complete and accurate payroll records for all workers performing Covered Services. Such records shall include the name, address, and social security number of each worker who provided Covered Services including apprentices, their classification, a general description of the services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made, and actual wages paid. Every subcontractor who shall perform any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by the City and its authorized representatives and DIR.

3.6.6 **Certified Payrolls.** Contractor shall prepare certified payrolls pursuant to California Labor Code section 1776 for the period involved for all employees, including those of subcontractors, who performed the Covered Services. Contractor and each subcontractor performing Covered Services shall electronically submit certified payrolls to the City and to DIR as specified by the City and DIR. Contractor and all subcontractors that will perform Covered Services shall attend a training session provided by the City. Contractor and applicable

subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to the City.

3.6.7 **Compliance Monitoring.** Covered Services performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by DIR and/or OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with DIR and/or OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements. Contractor agrees that (i) OLSE shall have the right to engage in random inspections of job sites and have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks; (ii) Contractor shall maintain a sign-in and sign-out sheet showing which employees are present on the job site; (iii) Contractor shall prominently post at each job-site a sign informing employees that the project is subject to the City's prevailing wage requirements and that these requirements are enforced by OLSE; and (iv) OLSE may audit such records of Contractor as it reasonably deems necessary. Failure to comply with these requirements may result in penalties and forfeitures pursuant to the California Labor Code, including section 1776(g), as amended from time to time, and San Francisco Administrative Code Section 6.22(e).

3.6.8 **Remedies.** Should Contractor, or any subcontractor performing Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Agreement or subcontract for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit and, in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit back wages due plus the penalties set forth in Administrative Code Section 6.22(e) and/or California Labor Code section 1775. The City, when certifying any payment which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

3.7 **Reserved (Displaced Worker Protection Act).**

Article 4 Goods and Services

4.1 **Reserved (Primary and Secondary Contractors).**

4.2 **Reserved (Term Agreement – Indefinite Quantities).**

4.3 **Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.4 **Goods.**

4.4.1 **Place of Manufacture.** No article furnished hereunder shall have been made in prison or by convict labor, except Goods purchased for use by City's detention facilities. The City may require Contractor to provide within seven (7) working business days from the date they are requested to do so, information and documentation requested by Purchaser including, but not limited to: sources of supply, distribution, dealership or agency agreements

and authorizations from manufacturer(s) they claim to represent, lines of credit with financial institutions for manufacturer(s) they claim to represent, lines of credit with financial institutions and suppliers, numbers of employees, trade references, and any other information to determine the Contractor's fitness to supply the Agreement requirements.

4.4.2 **Electrical Products.** Goods must comply with all applicable laws, ordinances, and other legal requirements including (among others) the Cal-OSHA regulations in Title 8 of the Code of Regulations and, for electrical products, Sections 110.2 and 110.3 (B) of the S.F. Electrical Code.

4.4.3 **Condition of Goods.** Goods offered and furnished must be new and previously unused, and of manufacturer's latest model, unless otherwise specified herein. Contractor shall establish quality control measures, as applicable to department's operations, and promptly provide documented reports to City of any product defects or premature failures.

4.4.4 **Inspection.** All Goods supplied shall be subject to inspection and acceptance or rejection by Purchasing or any department official responsible for inspection. Non-conforming or rejected Goods may be subject to reasonable storage fees.

4.4.5 **F.O.B.** Goods shall be shipped Freight on Board, to any destination named in a Purchase Order issued by City against this Agreement. *The cost of shipment must be incorporated into the offered unit costs.*

4.4.6 **Failure to Deliver.** If Contractor fails to deliver Goods of the quality, in the manner or within the time called for by this Agreement, then City may cancel the order at no cost to the City and acquire such Goods from any source. If City is required to pay a price that exceeds the price agreed upon by this Agreement, the excess price may be charged to and collected from Contractor (or sureties on its bond, if bond has been required); the City may terminate the Agreement for default; or the City may return deliveries already made and receive a refund.

4.4.7 **Safety Data Sheets.** Where required by law or by City, Contractor will include Safety Data Sheets (SDSs) with delivery for applicable items. Failure to include the SDSs for such items will constitute a material breach of contract and may result in refusal to accept delivery.

4.4.8 **Awarded Goods.** If during the term of the Agreement, a contract item is determined to be unacceptable for a particular use, and such is documented by a City department and as determined by Purchasing, it is understood and agreed that the item will be canceled and removed from the Agreement without penalty to the City. The City's sole obligation to the supplier is payment of deliveries made prior to the cancellation date. City shall give the supplier ten (10) days' notice prior to any cancellation. The City will purchase the required replacement item from any source and in the manner as determined by Purchasing. If a contracted item has been discontinued by the manufacturer or is deemed temporarily unavailable, it will be the responsibility of the Contractor to search the marketplace and find an acceptable equal substitute in the time required for delivery and at the Agreement price. Contractor must notify Purchasing in writing, which can include email, certified mail, registered mail, or other trackable mail, of any changes in the description of article, brand, product code, or packaging. Any changes made without the approval of City will constitute a Default.

4.4.9 **Warranty.** Contractor warrants to City that the manufacturer's warranty and service will be passed on to the City at the time of delivery.

4.5 **Services.**

4.5.1 **Services Contractor Agrees to Perform.** Contractor agrees to provide the Goods and perform the Services stated in the Appendices attached to this Agreement, and each Purchase Order executed pursuant to this Agreement. Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Goods and Services beyond the Goods and Services listed in the Appendices and executed Purchase Order, unless the Appendices are modified as provided in Section 11.5, "Modification of this Agreement", or the Purchase Order is modified in writing by the City and Contractor.

4.5.2 **Subcontracting.** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Contractor agrees City shall have the right to communicate directly with any subcontractor(s) in connection with Technology Marketplace Transactions under this Agreement. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. In connection with performing work under this Agreement, Contractor and any authorized subcontractors shall not enter non-compete agreements prohibited by California Business and Professions Code section 16600 in which either Contractor or subcontractor are prohibited from entering into or starting a similar profession or trade in competition against the other related to the Services Contractor or any subcontractor(s) have agreed to perform under this Agreement. Services performed by Contractor or any subcontractor(s) outside of the United States must be disclosed to City with all quotes and scopes of work and shall not be permitted without prior written approval of City. Any agreement made in violation of this provision shall be null and void.

4.5.3 **Awarded Services.** If, during the term of the Agreement, a contract service is determined to be unacceptable for a particular department, and such is documented by Purchasing, it is understood and agreed that the service will be canceled and removed from the Agreement without penalty to City. City's sole obligation to Contractor is payment for Services performed prior to the cancellation date. City shall give Contractor ten (10) days' notice prior to any cancellation. City will contract for the required service from any source and in the manner as determined by Purchasing. Contractor must notify Purchasing in writing, which can include email, certified mail, registered mail, or other trackable mail, thirty (30) days in advance of any changes in the Services required in the Agreement. Any changes made without the approval of Purchasing will constitute a default.

4.5.4 **Independent Contractor; Payment of Employment Taxes and Other Expenses.**

(a) **Independent Contractor.** For the purposes of this Section 4.5, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that, at all times, 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 delivers the Goods and Services required by this Agreement 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 performing any of the obligations pursuant to this Agreement, 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 Employment 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 this Section 4.5 shall be solely limited to 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 hold 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 attorneys' fees, arising from this Section.

4.6 **Assignment.** The Services to be performed and Goods to be delivered by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or

delegated by Contractor, or its agents or employees unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned; (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor, or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

4.7 **Liquidated Damages.** Contractor acknowledges that certain Technology Marketplace Transactions may require that Contractor meet specific dates for providing Deliverables under the Agreement. In such cases, Contractor agrees that its failure to adhere to the schedule specified in the Purchase Order may subject City to actual damages that are impractical or extremely difficult to ascertain. Contractor understands and agrees that City may specify in the Purchase Order, as a reasonable estimate of the loss City will incur because of Contractor's delay, a daily rate of liquidated damages. By accepting the Purchase Order, Contractor agrees that this sum shall not be considered a penalty and is an agreed upon sum of monetary damages sustained by City because of Contractor's failure to furnish Deliverables to City within the time period fixed or such extensions of time permitted in writing by City.

4.8 **Bonding Requirements.** The Contractor may be required on a case-by-case basis to furnish a performance bond in a form acceptable to the City, to guarantee the faithful performance of this Agreement. The bonds must be approved as to sufficiency and qualifications of the surety by the Controller and City Attorney.

4.9 **Reserved (Fidelity Bond).**

4.10 **Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Goods and Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver products using all modes of transportation available. Contractor shall provide a twenty-four (24) hour emergency telephone number of a company representative who is able to receive and process orders for immediate delivery or will call in the event of an emergency. In addition, the Contractor shall charge fair and competitive prices for Goods and Services ordered during an emergency and not covered under the awarded Agreement.

4.11 **Usage Reports by Contractor.**

4.11.1 Upon request, Contractor shall prepare and submit to City an electronic report of the total Goods delivered and/or Services rendered under this Agreement during the period of time requested by City. The report must list by City department the following: (1) all Goods and Services ordered ("Order"); (2) all Goods and Services delivered; (3) the date on which each Order was placed; (4) the date on which each Order was delivered; and (5) total quantity and unit price of the Goods and/or Services contained within each Order. Contractor

must also furnish a separate similar report for the total of all items and/or Services ordered by City, which are not part of this Agreement.

4.11.2 Reserved.

4.11.3 Reserved.

4.12 **Warranty.** If equipment maintenance is required under this Agreement, Contractor warrants to City that the maintenance services will be performed with the degree of skill and care that is required by current, good, and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the maintenance services are performed so as to ensure that all maintenance services performed are correct and appropriate for the purposes contemplated in this Agreement. Contractor warrants to City that the manufacturer's warranty and service will be passed on to the City at the time of delivery.

Article 5 Insurance and Indemnity

5.1 **Insurance.**

5.1.1 The following insurance requirements are the minimum coverages required under this Agreement. At the individual purchase level, on a project-by-project basis, these requirements may be modified based on the Goods and/or Services the City is procuring under this Agreement. Such modifications may include the type of insurance, the required minimum limits of insurance, as well as exclusions or inclusions related to coverage. Any such changes will be stated in the accompanying Purchase Order issued under this Agreement.

5.1.2 **Required Coverages.** 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:

(a) Commercial General Liability Insurance with limits not less than $2,000,000 or more as determined by the Department each occurrence for Bodily Injury and Property Damage including Contractual Liability, Personal Injury, and Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than $1,000,000 or more as determined by the Department each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage including Owned, Non-Owned, and Hired auto coverage, as applicable.

(c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than $1,000,000 or more as determined by the Department each accident, injury, or illness.

(d) Technology Errors and Omissions Liability coverage, with limits of $5,000,000 or more as determined by the Department for each claim and each loss. The policy shall, at a minimum, cover professional misconduct or lack of the requisite skill required for the performance of the Agreement and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) 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.

(e) Cyber and Privacy Insurance with limits of not less than $5,000,000 or more as determined by the Department per claim. Such insurance shall include coverage for 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.

(f) Reserved (Pollution Liability Insurance).

5.1.3 **Additional Insured Endorsements.**

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its officers, agents, and employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its officers, agents, and employees.

(c) Reserved (Pollution Auto Liability Insurance Additional Insured Endorsement).

5.1.4 **Waiver of Subrogation Endorsements.**

(a) The Workers' Compensation policy(ies) 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.

5.1.5 **Primary Insurance Endorsements.**

(a) The Commercial General Liability policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Reserved (Pollution Liability Insurance Primary Insurance Endorsement).

5.1.6 **Other Insurance Requirements.**

(a) Thirty (30) days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 entitled, "Notices to the Parties."

(b) 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 (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) 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.

(d) 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.

(e) Before delivering any Goods and/or commencing any Services, 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. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to deliver Goods and/or provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees, and the Contractor as additional insureds.

5.2 **Indemnification.**

5.2.1 Contractor shall indemnify and hold harmless 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 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 personal 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 (as set forth in subsections (i) – (v) above) 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. 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.

5.2.2 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.

5.2.3 Contractor shall indemnify and hold City harmless from all loss and liability including attorneys' fees, court costs, and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services and/or delivery of Goods pursuant to this Agreement.

5.2.4 Under no circumstances will the City indemnify or hold harmless Contractor.

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," 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 OR GOODS DELIVERED IN CONNECTION WITH THIS AGREEMENT.

6.2 **Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Contractor or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented, or loaned by City.

6.3 **Liability for 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.

Article 7 Payment of Taxes

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Goods and Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply.

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes and, therefore, may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (See, e.g., Rev. & Tax. Code § 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 **Termination for Convenience.**

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination ("Notice of Termination"). The Notice of Termination shall specify the date on which termination of the Agreement shall become effective ("Termination Date").

8.1.2 Upon receipt of the Notice of Termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the Termination Date and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to

the prior approval of City. Such actions may include any or all of the following, without limitation:

(a) Halting the performance of all obligations under this Agreement on and after the Termination Date.

(b) Terminating all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for Goods, materials, Services, equipment, or other items.

(c) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any obligations that City requires Contractor to complete prior to the Termination Date.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement, which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within thirty (30) days after the Termination Date, Contractor shall submit to City an invoice, which shall set forth the cost of all Goods and Services delivered prior to City's Notice of Termination. City's payment obligation pursuant to this Section 8.1.3 shall be subject to Section 3.3.2 of this Agreement. With respect to reimbursement for Contractor's services in connection with the maintenance of equipment, in no event will the compensation paid for the month in which termination occurs be greater than the scheduled monthly fee multiplied by a fraction, the numerator of which will be the days in the month elapsed prior to the Termination Date and the denominator of which shall be thirty-one (31). Upon approval and payment of this invoice by City, City shall be under no further obligation to Contractor monetarily or otherwise.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the Termination Date, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Goods delivered and/or Services rendered by Contractor under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense, which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for the Goods delivered and/or Services rendered by Contractor's final invoice; (ii) any claim, which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding Section 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Goods delivered and/or Service rendered by Contractor under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Goods and

Services, the difference between the invoiced amount and City's estimate of the reasonable cost of delivering the invoiced Goods and/or performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

8.1.7 Contractor agrees and acknowledges that cancellation or termination of any Purchase Orders issued under this Agreement are governed by provisions stated in Appendix A.

8.2 **Termination for Default; Remedies.**

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement or any Purchase Order issued under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant, or condition contained in any of the following sections of this Agreement:

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.6	Assignment	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant, or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten (10) days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may, in its sole discretion, immediately terminate this Agreement for default or grant an additional period not to exceed five (5) days for Contractor to cure the default.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement, or any other petition in bankruptcy or for liquidation, or to take advantage of any bankruptcy, insolvency, or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee, or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee, or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property; (ii) constituting an order for relief or approving a petition for relief, or reorganization, arrangement or any other petition in bankruptcy or for liquidation, or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; or (iii) ordering the dissolution, winding-up, or liquidation of Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs, or expenses incurred by City as a result of an Event of Default; (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii) any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.2 shall survive termination of this Agreement.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules, and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.2.5 Contractor agrees and acknowledges that cancellation or termination of any Purchase Orders issued under this Agreement are governed by provisions stated in Appendix A.

8.3 **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 or of any Purchase Order issued under this Agreement 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.

8.4 **Rights and Duties upon Termination or Expiration.**

8.4.1 This Section, and the following sections of this Agreement listed below, shall survive termination or expiration of this Agreement or any Purchase Order issued under this Agreement:

3.3.2	Payment Limited to Satisfactory Services and Delivery of Goods		9.2	Works for Hire
3.3.7	Grant Funded Contracts		11.6	Dispute Resolution Procedure
3.4	Audit and Inspection of Records		11.7	Agreement Made in California; Venue
3.5	Submitting False Claims		11.8	Construction
Article 5	Insurance and Indemnity		11.9	Entire Agreement
6.1	Liability of City		11.10	Compliance with Laws

6.3	Liability for Incidental and Consequential Damages		11.11	Severability
Article 7	Payment of Taxes		Article 12	Department Specific Terms
8.1.6	Payment Obligation		Article 13	Data and Security
9.1	Ownership of Results		Appendix B	Business Associate Agreement

8.4.2 Subject to the survival of the sections identified in Section 8.4.1 above, if this Agreement or any Purchase Order issued under this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement or any Purchase Order issued under this Agreement shall be of no further force or effect. Contractor shall transfer title to City and deliver in the manner, at the times and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, other materials produced as a part of, or acquired in connection with the performance of this Agreement or any Purchase Order issued under this Agreement, and any completed or partially completed work, which, if this Agreement or any Purchase Order issued under this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights in Deliverables

9.1 **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 for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **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.

Article 10 Additional Requirements Incorporated by Reference

10.1 **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 http://www.amlegal.com/codes/client/san-francisco_ca/.

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (section 87100 *et seq.*); or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services or delivering the Goods, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 **Consideration of Salary History.** Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at https://sfgov.org/olse/consideration-salary-history. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5 **Nondiscrimination Requirements.**

10.5.1 **Nondiscrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code Section 12B.2 applies to this Agreement. 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 employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 **Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. If LBE subcontracting participation applies, Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor's LBE subcontracting commitments.

10.7 **Minimum Compensation Ordinance.** If Administrative Code Chapter 12P applies to this Agreement, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at http://sfgov.org/olse/mco. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

10.8 **Health Care Accountability Ordinance.** If Administrative Code Chapter 12Q applies to this Agreement, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at http://sfgov.org/olse/hcao. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any subcontract entered into by Contractor shall require any subcontractor with twenty (20) or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

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

10.10 **Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity, which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using, or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering or using alcoholic beverages, or being under the influence of alcohol.

10.11 **Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves; (ii) a candidate for that City elective office; or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date the City approves the contract. 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 ten percent (10%) in Contractor; any subcontractor listed in the bid, proposal, or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 **Reserved (Slavery Era Disclosure).**

10.13 **Reserved (Working with Minors).**

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

10.14.1 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 Chapter 12T is available on the web at http://sfgov.org/olse/fco. Contractor is required to comply with all of the applicable provisions of Chapter 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.

10.14.2 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.

10.15 **Public Access to Nonprofit Records and Meetings.** If Contractor is a non-profit organization; provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries); and receives a cumulative total per year of at least $250,000 in City funds or City-administered funds, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

10.16 **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.

10.17 **Reserved (Distribution of Beverages and Water).**

10.18 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose any tropical hardwood, tropical hardwood wood product, virgin redwood, or virgin redwood wood product.

10.18.1 Reserved.

10.19 **Reserved (Preservative Treated Wood Products).**

10.20 **Reserved (Sweat Free Procurement).**

10.21 **Environment Code Chapter 5, Resource Conservation Ordinance.**

10.21.1**Reserved (Printing Services and/or Writing Paper Products).**

10.21.2 **Reserved (Collection of Recyclable Materials).**

10.22 **Reserved (Prop J Approval).**

10.23 **Use of City Opinion.** Contractor shall not quote, paraphrase, or otherwise refer to or use any opinion of City, its officers or agents, regarding Contractor or Contractor's performance under this Agreement without prior written permission of Purchasing.

Article 11 General Provisions

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

To City:	**Jonathan Jew, Senior Purchaser** **Office of Contract Administration** **1 Dr. Carlton B. Goodlett Place, Rm 430** **San Francisco, CA 94110** **Jonathan.jew@sfgov.org**
To Contractor:	Cathy Souza Executive Vice President CCT Technologies, Inc. dba ComputerLand of Silicon Valley 808 W San Carlos Street, Suite 20 San Jose, CA 95126 csouza@cland.com (408) 519-3230

Any notice of default must be sent by certified mail or other trackable overnight mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services and/or Goods in a manner that complies with the Americans with Disabilities Act

(ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state, and local disability rights legislation.

11.3 **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services or delivery of the Goods, and City's payment are subject to the California Public Records Act, (California Government Code § 7920 et seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state, or local law.

11.5 **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. If LBE subcontracting goals apply and the contract amount is fifty thousand dollars ($50,000) or more, Contractor shall cooperate with the Department to submit to the Director of CMD any amendment, modification, supplement, or change order that would result in a cumulative increase of the original amount of this Agreement by more than twenty percent (20%) (CMD Contract Modification Form).

11.6 **Dispute Resolution Procedure.**

11.6.1 **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 or delivery of the Goods under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. 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. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

11.6.2 **Government Code Claim Requirement.** 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 California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code section 900, et seq.

11.6.3 **Reserved (Health and Human Service Contract Dispute Resolution Procedure).**

11.7 **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.

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

11.9 **Entire Agreement.** This contract sets forth the entire Agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 **Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances, and duly adopted rules 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 as they may be amended from time to time.

11.11 **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby; and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties, and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

11.12 **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, 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.

11.13 **Order of Precedence.** Contractor's obligations for Technology Marketplace Transactions occurring under this Agreement are set forth in the following documents: this Agreement; the Purchase Order issued under this Agreement; any Term Sheets incorporated into the Purchase Order; Contractor's bid, quote, or proposal accepted by the City and incorporated into the Purchase Order (collectively, "TMBid"); Contractor's terms of use and support if applicable and accepted by the City; and, if applicable, any scope of work agreed upon between the City and Contractor for Services. Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and conditions and Contractor's terms included in the TMBid or Contractor's terms of use, the City's terms shall take precedence. When applicable and upon City's sole and absolute discretion, City reserves the right to incorporate additional terms and conditions to each accompanying Purchase Order and applicable Term Sheet(s). All changes to Purchase Orders must be done in writing through the re-issuance of a revised Purchase Order.

11.14 **Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests, and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than twenty-four (24) hours after it receives the request.

Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

11.15 **Cooperative Agreement.** Contractor agrees that during the term of this Agreement and any authorized extension, the Director of Purchasing may allow other public agencies or non-profits made up of multiple public agencies to utilize this Agreement to obtain some or all of the Services and/or Goods to be provided by Contractor under the same terms and conditions as the City.

Article 12 Department Specific Terms

12.1 **Third-Party Beneficiaries.** No third parties are intended by the Parties hereto to be third-party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either Party by any person who is not a party hereto.

12.2 **Exclusion Lists and Employee Verification.**

12.2.1 Contractor acknowledges that some or all of Services or Commodities that Contractor furnishes to City under this Agreement may be included, directly or indirectly, in whole or in part, in claims submitted by City to Federal or State health care programs. By executing this Agreement Contractor certifies that it is not currently, and shall not during the term of this Agreement become, excluded, directed to be excluded, suspended, ineligible, or otherwise sanctioned from participation in any Federal or State assistance programs. Contractor shall notify City, as provided in Section 11.1 ("Notices to the Parties"), within thirty (30) days of any such exclusion, suspension, ineligibility, or other sanction. This is a material term of this Agreement. Contractor agrees to indemnify and hold harmless City and City's officers, directors, employees, agents, successors, and permitted assigns from and against any and all (including, but not limited to, Federal, State, or third party) civil monetary penalties, assessments, repayment obligations, losses, damages, settlement agreements, and expenses (including reasonable attorneys' fees) arising from the exclusion, suspension, ineligibility, or other sanction of Contractor and/or Contractor's workforce (including those who oversee Contractor's workforce, supervisors, and governing body members) from participation in any Federal or State assistance program.

Article 13 Data and Security

13.1 **Nondisclosure of Private, Proprietary, or Confidential Information.**

13.1.1 **Protection of Private Information.** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement, and only as necessary in performing the Services or delivery of the Goods under this Agreement. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 **Confidential Information.** In the performance of Services or delivery of the Goods pursuant to this Agreement, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City's behalf, such information must be held by Contractor in confidence and used only in performing 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 or Confidential Information.

13.2 **Payment Card Industry ("PCI") Requirements.** Contractors collecting electronic payments on behalf of the City or providing Services and products that handle, transmit, or store cardholder data are subject to the following requirements.

13.2.1 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.

13.2.2 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.

13.2.3 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.

13.2.4 For items 13.2.1 to 13.2.3 above, Contractor shall provide a letter from their qualified security assessor (QSA) affirming their compliance and current PCI or PTS compliance certificate.

13.2.5 Contractor shall be responsible for furnishing City with an updated PCI compliance certificate thirty (30) calendar days prior to its expiration.

13.2.6 **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.

13.3 **Business Associate Agreement.** The Parties acknowledge that City is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is required to comply with the HIPAA Privacy Rule governing the access, use, disclosure, transmission, and storage of protected health information (PHI) and the Security Rule under the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"). Contractor or, where applicable, its subcontractor(s) will be required to enter into a Business Associate Agreement, substantially in the form attached hereto as Appendix B, if the Contractor or, where applicable, its subcontractor(s) will do at least one or more of the following:

1. Create, receive, maintain, or transmit PHI for or on behalf of City (including storage of PHI, digital or hard copy, even if Contractor does not view the PHI or only does so on a random or infrequent basis);
2. Receive or retain access to PHI, from City or another Business Associate of City, as part of providing Goods and Services to or for City including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial; or
3. Transmit PHI data for City and require access on a regular basis to such PHI (such as health information exchanges (HIEs), e-prescribing gateways, or electronic health record vendors).

Under such circumstances, and for purposes of this Agreement, Contractor is a Business Associate of City as defined under HIPAA. As such, Contractor must comply with and complete the Business Associate Agreement and attestations attached to this Agreement.

13.4 **Protected Health Information.** Where applicable, Contractor, all subcontractors, all agents and employees of Contractor shall comply with all federal and state laws regarding the transmission, storage, and protection of all private health information, if any, 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 Agreement. 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 Agreement.

13.5 **Management of City Data.**

13.5.1 **Use of City Data.** Contractor agrees to hold City Data received from, or created or collected on behalf of the City in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the continental United States is prohibited, absent prior written authorization by the City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data by Contractor, subcontractors, or other third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.6 **Disposition of City Data.** Upon request of City, or termination or expiration of this Agreement and pursuant to any document retention period required by this Agreement, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City

Data given to, or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within ten (10) business days clear or purge all City Data from its servers and any hosted environment Contractor has used in performance of this Agreement including its subcontractor's environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge. Secure disposal shall be accomplished by "clearing," "purging," or "physical destruction" in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.7 **Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City. Use of Artificial Intelligence (AI) to perform professional services under this Agreement shall be permitted solely upon written approval of City. Use of City Data to train AI under this Agreement shall be permitted solely upon written approval of the City.

13.8 **Cybersecurity Risk Assessment.** Where applicable, City may require Cybersecurity Risk Assessment (CRA) be performed for each entity manufacturing the Goods, performing technical functions related to the performance of the Goods, and/or accessing City's networks and systems under this Agreement. Where Contractor performs an active role in any of these activities, CRA may also be required for Contractor.

To conduct a CRA, City may collect prior to execution or at any time throughout the duration of this Agreement, one of the following two reports:

1. **SOC-2 Type 2 Report:** Report on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy; or
2. **City's Cyber Risk Assessment Questionnaire:** Contractor's responses to City's Cyber Risk Assessment Questionnaire.

The above reports may be requested prior to execution or at any time throughout the duration of this Agreement. The reports will be evaluated by the awarding department and the City's Department of Technology to identify existing or potential cyber risks to City. Should such risks be identified, City shall afford Contractor an opportunity to cure such risk within a period of time deemed reasonable to City. Failure by Contractor to remedy the identified risks within such period of time shall constitute a material breach of this Agreement, and City may terminate this Agreement for default. Such remediation and continuing compliance shall be subject to City's on-going review and audit through industry-standard methodologies including, but not limited to: on-site visits, review of the entities' cybersecurity program, penetration testing, and/or code reviews.

13.9 **Loss or Unauthorized Access to City's Data; Security Breach Notification.** Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of personal identifiable information or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City's Data (any "Leak") within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved personal identifiable information. Contractor, at its

own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially-injured parties. Contractor shall pay for the provision to the affected individuals of twelve (12) months of free credit monitoring services, if the Leak involved information of a nature reasonably necessitating such credit monitoring. The remedies and obligations set forth in this Section are in addition to any other City may have. City shall conduct all media communications related to such Leak.

Article 14 MacBride And Signature

14.1 **MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code Chapter 12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

CITY

Recommended by:

DocuSigned by:
Daniel Sanchez
36604DF85002453...

Daniel Sanchez
Supervising Purchaser
Office of Contract Administration

CONTRACTOR

CCT Technologies, Inc. dba ComputerLand of Silicon Valley

DocuSigned by:
Connie Tang
00F2C055720F465...

Connie Tang
CEO
City Supplier Number: **22410**

Approved as to Form:

David Chiu
City Attorney

By: DocuSigned by:
1A2698E99B824E2...
Dee Nguyen
Deputy City Attorney

Approved:

DocuSigned by:
Tarannh Moayed
9AEA44694D514E7...
Sailaja Kurella
Director of the Office of Contract Administration, and Purchaser

A:	Procedures and Requirements
B:	HIPAA Business Associate Agreement, Privacy Attestation, and Data Security Attestation
C:	Technology Specific Term Sheets

Appendix A

Procedures and Requirements

The Technology Marketplace is a pool of IT contractors that provide Goods and/or Services to City departments on an as-needed basis. Contractor is responsible for responding to City's requests for quotations, bids, or proposals for Goods and Services. When a Technology Marketplace Transaction results in a Purchase Order ("PO"), Contractor shall be responsible for procuring the Good and/or Service and for ensuring that all Goods are delivered and Services provided in accordance with the City's specifications, terms, and conditions. POs are awarded to Technology Marketplace contractors in accordance with the policies of the Office of Contract Administration ("OCA" or "Purchasing") and applicable laws and regulations of City as they may be amended from time to time.

After contract award, a competitive solicitation will be required for all Technology Marketplace Transactions greater than a $10,000 threshold, which may be revised during the term of this Agreement. Transactions shall not exceed $2,500,000 unless otherwise authorized by the Purchaser – such limit may be revised during the term of this Agreement at the sole discretion of the City.

All terms and conditions in this Appendix A shall be incorporated into every Technology Marketplace Transaction PO.

A. Ordering, delivery, invoicing, and related procedures

1. Ordering

a. Goods and Services shall be ordered by the City solely by means of a PO. All orders must be approved and issued by Purchasing or as authorized by Purchasing in writing.
b. Contractors shall not accept verbal orders from City or any order that is not in the form of a written PO.
c. Within three (3) business days after receipt of an order, Contractor must verify the accuracy of the order and provide written or electronic notification of Contractor's acceptance or rejection of the order and delivery dates.
d. If an item is discontinued, Contractor must notify Purchasing and the end user department within three (3) business days of receipt of an order or upon notification by the manufacturer or distributor (whichever comes first) that the order cannot be filled. Contractor must not fill the order with a substitute item without the prior written approval of Purchasing. Items that are substituted without approval may be returned at no cost to the City and the order cancelled.

2. Delivery of Goods

a. **Location of Delivery.** All Goods shall be delivered inside the building designated in the Purchase Order, and the delivery shall require a signature from a City staff or representative confirming receipt.
b. **Delivery Lead Time.** Goods shall be delivered in accordance with the terms of Contractor's quote and City's Purchase Order.

c. **Notice of Delivery.** Prior to all deliveries, Contractor shall provide scheduled delivery dates to the ordering department. Any deliveries made without prior scheduling will be rejected by the department with no additional costs incurred.
d. **Hours of Delivery.** Unless requested otherwise by City in the Purchase Order, all deliveries shall be made and accepted at the City location indicated by the ordering department between the hours of 8:00 A.M. and 2:00 P.M.
e. **Substitutions.** No substitutions will be allowed unless approved in advance in writing by City.
f. **Emergency Deliveries.** Emergency deliveries shall be delivered by best means possible. Should the emergency delivery cause City to incur additional costs not contemplated by this Agreement, Contractor shall obtain City's prior approval. Contractor shall notify City of the estimated time of delivery.
g. **Complete Orders.** Orders must be delivered in total, unless a prior written authorization for partial shipment has been received from the ordering department.
h. **Back Orders.** Contractor shall notify the ordering department immediately if it is unable to deliver the items and/or quantity ordered. Contractor must notify and obtain approval from the ordering department prior to delivery of any back-ordered items. Department may reject back-ordered items at no additional costs incurred to the City. If back-ordered items are delayed in excess of five (5) business days, City may reject partial shipment or cancel the item(s) at no additional cost to the City.
i. **Packing Slips for Goods.** All deliveries must include a packing slip and provide the following information:
    1. Complete description including manufacturer's name and part number,
    2. Quantity ordered,
    3. Agreement number and contract item numbers,
    4. Back-ordered items and amount back-ordered,
    5. Date back-ordered items will be delivered, and
    6. Purchase Order number.

3. Invoicing

a. Invoices may be submitted only after delivery of Goods or provision of Services, as set forth in the scope of work, is complete.
b. **With respect to Goods,** a packing slip must be included with each shipment of Goods and must show the order number, a complete list of items delivered, and the Department name and contact person. The order number must also appear on the outside of the package.
c. **With respect to Services,** a detailed list of Services performed, Deliverables met, the Department name and contact person and, where applicable, timesheets signed by the department authorizing payment for the Services must be included with each invoice.

4. Change Orders

a. "**Change Order**" means a written instrument signed by City that modifies the applicable Term Sheet and the Agreement through an adjustment to one or more of the following: (i) the project schedule, (ii) the scope of work, (iii) the acceptance criteria, or (iv) other requirements specified in the applicable Term Sheet and the Agreement.

b. **City Proposed Change Order.** The City may at any time, by written order, and without notice to Contractor's sureties, submit a Change Order to Contractor. Within ten (10) working days of receiving a proposed Change Order, Contractor shall submit to City a written cost estimate, which shall include any adjustments to the project price, the project schedule, the scope of work, the acceptance criteria, or any other obligations of Contractor as applicable.

5. Cancellations of Purchase Orders

a. **Before Delivery of Goods or Performance of Services.** City may, without incurring any fees, penalties or other costs, cancel any PO for Goods and/or Services, other than POs of customized Goods, prior to scheduled delivery of a Good or, with respect to the performance of Services, any time prior to the performance of the Services. With respect to customized Goods, City may terminate the PO at any time but shall compensate Contractor for reasonable expenses incurred by Contractor in the performance of fulfilling the PO between the dates of issuance and cancellation.

b. **For Convenience.** City shall have the option, in its sole discretion, to terminate any PO, at any time during the term thereof, for City's convenience and without cause by giving Contractor written notice of such termination. In the event of such termination, Contractor will be paid for the Goods delivered and Services performed pursuant to the PO to the satisfaction of the City up to the date of termination. City will not be liable for costs incurred by Contractor after receipt of Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the PO, post-termination employee salaries, post-termination administrative expenses, or any other cost that is not authorized or reasonable.

c. **For Cause.** If Contractor fails to perform any of its obligations under a PO, City may terminate the PO and all of Contractor's rights thereunder. Termination will be effective after ten (10) days written notice to Contractor. If a PO is terminated for cause, City will pay Contractor for Goods delivered and/or Services performed to the satisfaction of the City up to the date of termination. City may offset from any such amounts due Contractor any costs City has or will incur due to Contractor's non-performance. Any such offset by City will not constitute waiver of any other remedies City may have against Contractor for financial injury or otherwise under this Agreement or the PO.

6. Title and Warranties

a. **Warranties.** Contractors shall transfer all warranties offered by manufacturers to the City on all Goods within forty-eight (48) hours (excluding weekends) of delivery to City. The Contractor must also offer any additional warranty services offered by a manufacturer for purchase.

b. **Passage of Title**

1. Contractor must pass title of licenses to software purchased to the City within forty-eight (48) hours (excluding weekends) of delivery and the City must be eligible for all benefits of ownership including free services provided under manufacturer's warranties within forty-eight (48) hours (excluding weekends) of delivery of Goods.

2. If after forty-eight (48) hours the City cannot obtain service under the manufacturer's warranty, because title has not been properly passed to the City by the Contractor or the Contractor has not properly recorded ownership, the City shall immediately notify the Contractor. Contractor will have twenty-four (24) hours to record title of the Good properly, repair the Good, or replace the non-working Good with a comparable working product.

c. **Liquidated Damages.** The timely transfer to City of manufacturer warranties and title to licenses procured through a PO is a material term of this Agreement. Contractor acknowledges that City, in its sole discretion, may include a liquidated damages provision in any PO to compensate City for actual damages that will be impractical or extremely difficult to determine. Contractor agrees that any such liquidated damages clause is not a penalty, but a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time the PO was issued. City may deduct a sum representing the liquidated damages from any money due to Contractor under this Agreement or any other contract between City and Contractor.

7. No Automatic Renewal. To the extent a Purchase Order issued under this Agreement involves the maintenance of equipment, and notwithstanding anything to the contrary contained in this Agreement or the Purchase Order (including, without limitation, any terms and conditions of Contractor attached hereto): (a) in no event shall the term of the Purchase Order be longer than the initial term expressly stated in the Purchase Order; (b) any automatic renewal or extension (whether or not conditioned upon any notice or absence thereof from either Party) or any similar "evergreen" provision shall be deemed null and void ab initio; and (c) the term of the Purchase Order shall not be extended or renewed except by written agreement duly authorized, executed, and delivered by City. In the event of any inconsistency within this Agreement or the Purchase Order relating to the duration of the initial term hereof, the shorter initial term shall govern. If no initial term is stated in the Purchase Order, then the term shall be one (1) year from the date on which the term commences.

B. Communications with the City

1. General Communications with the City

a. **Hours of Operation.** Contractor must maintain normal business hours of at least 8:00 A.M. to 5:00 P.M. Pacific Time, Monday through Friday throughout the term of the Agreement, and be open at all times during that period.

b. **Support.** Contractor shall be responsible for providing technical support and assistance to the City through Contractor's own personnel, equipment, and facilities as well as through manufacturer's technical representatives. As part of this technical support and assistance, the Contractor shall provide personnel with in-depth technical knowledge of the products the Contractor is providing under this Agreement, to answer questions and offer any assistance required by City personnel, during City business hours (8:00 A.M. to 5:00 P.M. Pacific Time, Monday through Friday).

c. **Response Time.** Contractor shall make reasonable efforts to respond to inquiries from City departments within one (1) business day. City inquiries may include

requests for consultation, design, pricing, order status, product comparisons, compatibility information, and return information.

d. **Toll-Free Telephone Number.** Contractor shall provide a toll-free number to accommodate telephone inquiries staffed by adequate personnel to provide prompt, courteous, and informed answers to City inquiries within two (2) hours of the customer's initial call. Contractor shall offer a "Help Desk" option to City departments using the Technology Marketplace.

e. **E-mail.** Contractor shall provide E-mail communication capacity with the City. Such E-mail communication must be compatible with that used by the City.

2. Account Manager

a. Contractor shall provide an Account Manager to function as the single point of contact with the City who will be responsible for all aspects of the Agreement and its facilitation.

b. The Account Manager shall be available to the City by phone and e-mail.

c. The Account Manager shall meet with City as the need arises and at no additional cost to the City to ensure that Contractor's performance of the Agreement continually meet the City's needs.

C. General Goods Policies

1. New Goods

a. Unless requested otherwise by City, Contractors shall sell only new products to the City. Contractors shall offer the latest commercially available versions of any and all hardware and software sold to the City. The City will not accept "gray market products."

b. If a new product is no longer available, then a remanufactured product will only be considered for acceptance upon prior written notification from Contractor to the City. A remanufactured product will not be shipped to the City unless Purchasing has issued a written letter of acceptance. Remanufactured equipment will only be accepted if it includes the full manufacturer's warranty, is eligible for inclusion under any applicable maintenance contracts and can be certified (as applicable) for maintenance purposes at no additional cost to the City.

2. Prohibited Goods and Minimum Specifications. From time to time, the City reserves the right to prohibit Contractor from selling to the City certain products, and to prohibit user departments from purchasing the same. The City may also set minimum specifications for performance or energy efficiency that may be updated from time to time. Contractor will be required to provide products that comply with these specifications. A Contractor found to be selling products that do not comply with these specifications may be suspended from selling to the City under this Agreement for a period of up to three (3) months.

3. Green Purchasing Requirements

a. Contractor shall offer processes and commit to ensure compliance with City green purchasing requirements. Contractor agrees to comply with the City's Green Purchasing policies established by the Department of the Environment as updated from time to time.

i. **Client Education.** Contractor shall educate departments on environmentally preferable ('green') product offerings designated by the City at the following link: https://www.sfapproved.org/.

ii. **Free Take Back and Recycling of Packaging Materials.** Upon request, Contractor shall provide free take back and recycling of packaging materials to City departments.

b. The Green Purchasing Requirements applicable to this Agreement are as follows (but are subject to change during the term of this Agreement and may be found at Green Purchasing Requirements):

i. **Computers & Monitors.** All desktops, laptops, tablets, workstations, thin clients, and computer monitors are required to be in the EPEAT registry at the time of purchase at Gold level.

ii. **Imaging equipment.** All imaging equipment purchased or leased by City departments, including copiers, digital duplicators, facsimile machines, multifunction devices, printers, mailing machines, and scanners (as defined by the U.S. ENERGY STAR® Imaging Equipment Specification), are required to achieve Gold registration in the EPEAT system.

iii. **Televisions & Large Digital Displays.** All televisions or large displays purchased or leased by City departments are required to achieve at the time of purchase at least one of the following: registration in the EPEAT system – OR – qualified under the current version of Energy Star® Program Requirements for Televisions – OR – qualified under the current version of Energy Star® Program Requirements for Displays.

iv. **Uninterruptible Power Supplies.** Uninterruptible power supplies must be Energy Star certified.

v. **Computer Servers.** Except for network infrastructure, appliances, and blades as defined by sfcoit.org/greenpolicy, City recommends that computer servers be registered as EPEAT Bronze or higher at the time of purchase. IT purchasers are encouraged to "right-size" their server specification in terms of memory and redundant power supplies, to review manufacturer data sheets of servers that meet the given need, and to choose models with high efficiency over a range of operating loads.

vi. **Appliances.** City recommends that all appliances be listed at ClimateFriendlyCooling.com, or meet specifications in Sustainable Purchasing Leadership Council's (SPLC) and the Institute for Governance and Sustainable Development's (IGSD) contract language for climate-friendlier products at bit.ly/2Wtp0Hb. In that link's Table of Contents, click Specifications. Other appliances should be Energy Star certified.

D. Maintenance and Repair Policies. All maintenance and repair work shall be performed by qualified and trained personnel. Contractor shall offer written quotes for all product repairs including an estimate of the time and cost of repairs.

E. Consulting and Professional Services Policies

1. Professional services provided under this Agreement may include project management, software development, hardware and software installation, system design, training, and other professional services related to the deployment of technology. City departments will solicit bids, quotes, or proposals to Technology Marketplace Contractors identifying the particular professional services requested.
2. When submitting a proposed scope of work ("SOW") to a City department, Contractor must define the consulting or professional services project requested by the department. As applicable, the City may request that the project include a transition plan detailing how the project will eventually be transitioned to City personnel, including a designation of City employees and training plans.
3. Performance Bonds may be required by ordering departments on a project-by-project basis based on the level of risk associated with the project.
4. Unless otherwise requested by a department, Contractor's SOW shall include, but is not limited to, the following:
    a. A schedule with agreed upon deliverables and milestones.
    b. Any critical milestones that would be subject to liquidated damages for delay, if applicable.
    c. The name of the project management software that will be used (such as MS Project).
    d. Estimated cost of sub-contractors and materials.
    e. Any proposed training services should be specified as a separate line item and deliverable and shall include:
        i. A detailed description of the training and a list of skills that will be made available through the training to provide for the ongoing maintenance of said project.
        ii. Estimated timeframe for training.
        iii. Number of employees to be trained and the number of hours of training to be provided to each employee.
        iv. The cost associated with training.
5. Contractor agrees that City may, in its sole discretion, impose a ten percent (10%) retention by the City on progress payments. The retention will be released for payment to Contractor when the project is accepted by the Department. Progress payments will be linked to a specific deliverable or the meeting of a specific milestone.
6. Contractor may be required to provide formal status reports during the life of the project. The format of the status report and the frequency of its preparation will be determined during the project approval process and will be dependent upon a number of variables such as:
    a. Estimated cost,
    b. Project complexity,
    c. Estimated time, and

d. Other aspects of the project deemed relevant by the City.

7. Any consulting or professional services project that exceeds one-hundred thousand dollars ($100,000) or is expected to require over ninety (90) days to complete may require quarterly meetings that include representation from:
   a. The ordering department,
   b. The City's Committee on Information Technology and/or Department of Technology,
   c. Contract Monitoring Division ("CMD"),
   d. Contractor, and
   e. All project sub-Contractors.

F. Pricing Policies

1. **Pricing.** After contract award, a competitive solicitation will be required for all Technology Marketplace Transactions greater than a ten thousand dollars ($10,000) threshold, which may be revised during the term of this Agreement. Transactions shall not exceed $2,500,000 unless otherwise authorized by the Purchaser – such limit may be revised during the term of this Agreement at the sole discretion of the City.
2. **Pricing offered to other customers.** Should Contractor participate in any government, educational, or other special pricing program, e.g., CMAS, GSA, Western States Contracting Alliance, etc., Contractor shall make the same pricing available to the City.
3. **Mandatory federal and state fees.** Contractor shall be responsible for collecting applicable federal and state mandatory fees with no additional cost mark-up to City, and shall be responsible for remitting the fees to the appropriate agency including, but not limited to, the California Electronic Waste Recycling Fee: https://calrecycle.ca.gov/electronics/recyclingfee/.
4. **Payment for Travel Expenses and Other Direct Costs (ODC).**
   a. The need for travel under this Agreement, an individual PO, or ODCs shall be approved in advance of the date of travel in writing by a memo, stating the dates of the travel, the purpose and the planned expenses by person, with the City's Project Manager's dated signature indicating approval. Reimbursable expenses shall include actual direct costs (with no markup) of expenses directly incurred by Contractor. Payments will be made by City to Contractor within thirty (30) days after the City has received Contractor's invoice for expenses, submitted in compliance with the United States General Services Administration per diem rates (CONUS) for San Francisco at http://www.gsa.gov.
   b. The following items will be eligible for reimbursement as ODCs:
      i. Contractor's out-of-town travel ("out-of-town" shall mean outside the nine Bay Area counties: San Francisco, Alameda, Marin, Santa Clara, Sonoma, Contra Costa, Napa, San Mateo, and Solano);
      ii. Contractor's out-of-town meal, travel, and lodging expenses for project-related business trips including, but not limited to:
         1. Rental vehicle: Contractor must select the most economical rental agency and type of vehicle available and acquire any commercial rate or government discount available when the vehicle is rented;
         2. Personal vehicle use: Contractor will be paid per mile as established by the United State Internal Revenue Service and only for that portion of travel that

is outside the nine Bay Area counties. Contractor shall submit to the City an approved mileage log with his/her expense sheet;

3. Contractor meal and lodging expenses shall be reasonable and actual but limited to CONUS per diem rates.

iii. Anything not listed above is not eligible for reimbursement.

5. **Subcontractor pricing.** Each quote, proposal, and invoice provided to City under this Agreement that includes work completed by a subcontractor must state the subcontractor's hourly rates and fees, and Contractor's mark-up amount.
6. **Taxes.** Prices shall be exclusive of any Federal, State, and local sales or use tax.

G. Reports

1. **Sales Reports.** Upon request, Contractor must deliver a report to Purchasing of products and services sold to City, including: the type, quantity, manufacturer name, manufacturer's part number and description, price paid per item and name of department. The City may make changes to the format or specifications for this report. Contractor must comply with all such changes. Contractor shall prepare and submit additional reports in accordance with format and content specifications to be provided by Purchasing.
2. **LBE report.** Contractor must provide CMD with CMD Form 7 demonstrating LBE participation and CMD Form 9, if applicable, by the tenth day of each month or the next workday thereafter.
3. **Proposed Subcontractors report.** Prior to commencing work on any project involving the use of subcontractors, Contractor shall submit a list of all proposed subcontractors to the ordering department before that project can be approved by City. Contractor shall submit supplemental subcontractor reports during the course of the project to show any substitution or addition of subcontractors. The substitution and addition will be subject to Department's approval. The following information for each subcontractor must be provided: name, address, telephone number, contact name, summary of work to be performed, and mark-up percentage.

H. Local Presence. If Contractor certified during the Request for Proposals # 99410 (Sourcing Event # 0000007900) dated August 21, 2023 that they have a local presence, Contractor shall have a business presence within the City and County of San Francisco for the duration of this Agreement. A "business presence" means an office, retail location, warehouse, or service facility within the City limits, in a location that is not residentially zoned. Home offices or home warehouses will not satisfy this requirement. Firms certified by CMD as LBEs automatically meet this requirement**.**

I. Other Requirements

a. **Infectious Disease Terms.** Contractors required to perform physical activities on City property that places Contractor or its employees in proximity to medical patients, including, but not limited to, San Francisco Department of Public Health facilities where patient care or counseling is performed, shall be subject to the following requirements, as applicable:

i. **Infection Control, Health, and Safety.**

1) Contractor must have a Bloodborne Pathogen (BBP) Exposure Control plan for its employees, agents, and subcontractors as defined in the California Code of Regulations, Title 8, section 5193, Bloodborne Pathogens (http://www.dir.ca.gov/title8/5193.html), and demonstrate compliance with all requirements including, but not limited to, exposure determination, training, immunization, use of personal protective equipment and safe needle devices, maintenance of a sharps injury log, post-exposure medical evaluations, and recordkeeping.
2) Contractor must demonstrate personnel policies/procedures for protection of its employees, agents, subcontractors, and clients from other communicable diseases prevalent in the population served. Such policies and procedures shall include, but not be limited to, work practices, personal protective equipment, staff/client Tuberculosis (TB) surveillance, training, etc.
3) Contractor must demonstrate personnel policies/procedures for Tuberculosis (TB) exposure control consistent with the Centers for Disease Control and Prevention (CDC) recommendations for health care facilities and based on the Francis J. Curry National Tuberculosis Center: Template for Clinic Settings, as appropriate.
4) Contractor must demonstrate personnel policies/procedures for COVID-19 exposure control consistent with CDC recommendations, Cal/OSHA regulations, SF DPH Health Orders, Directives, and Guidance. Contractor's attention is directed to Cal/OSHA's new 8 CCR 3205 COVID-19 Prevention Emergency Temporary Standard and/or any successor regulations.
5) Contractor is responsible for site conditions, equipment, and health and safety of their employees and all other persons who work or visit the job site.
6) Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as BBP and TB, demonstrating appropriate policies and procedures for reporting such events, and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.
7) Contractor shall comply with all applicable Cal-OSHA standards, including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.
8) Contractor assumes responsibility for procuring all medical equipment and supplies for use by its employees, agents, and subcontractors including safe needle devices, and provides and documents all appropriate training.
9) Contractor shall demonstrate compliance with all state and local regulations with regard to handling and disposing of medical waste.

ii. **Aerosol Transmissible Disease Program, Health, and Safety.**

1) Contractor must have an Aerosol Transmissible Disease (ATD) Program as defined in the California Code of Regulations, Title 8, section 5199, Aerosol Transmissible Diseases (http://www.dir.ca.gov/Title8/5199.html), and demonstrate compliance with all requirements including, but not limited to, exposure determination, screening procedures, source control measures, use of personal protective equipment, referral procedures, training, immunization, post-exposure medical evaluations/follow-up, and recordkeeping.

2) Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as Aerosol Transmissible Disease, demonstrating appropriate policies and procedures for reporting such events, and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.
3) Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.
4) Contractor assumes responsibility for procuring all medical equipment and supplies for use by its employees, agents, and subcontractors including Personnel Protective Equipment such as respirators, and provides and documents all appropriate training.
5) If/when Contractor determines that they do not fall under the requirements of 8 CCR 5199, Contractor is directed to Cal/OSHA's Emergency Temporary Standard for COVID-19, 8 CCR 3205, which applies to all employers who do not fall under 8 CCR 5199 but for whose employees have potential for exposure to COVID-19.

b. **ADA Compliance.** Contractor's warehouse facility shall comply with Title III of the Americans with Disabilities Act Regulations (including Title 3 Accessibility Guidelines), and Title 24, State of California Building Code (California Accessibility Regulations) regarding access to people with disabilities.

J. Marketplace Transactions Surviving the Term of this Agreement

1. At least ninety (90) days before the Agreement expires, Contractor shall provide the City with a list of all Technology Marketplace Transactions for which obligations extend beyond expiration of this Agreement. At City's direction, Contractor shall assign to City all of the Contractor's right, title, and interest that will not be fully executed or performed by the Agreement expiration date including, without limitation, ongoing software licenses and software maintenance agreements not previously assigned to City. City shall have the right, in its sole discretion, to direct the Contractor to assign any and all such orders and subcontracts.
2. If a Purchase Order issued against this Agreement is for Goods and/or Services that will be delivered or performed after the end date of this Agreement, the terms and conditions of this Agreement and the Purchase Order shall survive the end of the contract term until such time performance of the Purchase Order has been completed.

Appendix B

Business Associate Agreement

(Version 8/3/2022)

1. **Create, receive, maintain, or transmit PHI for or on behalf of City (including storage of PHI, digital or hard copy, even if Contractor does not view the PHI or only does so on a random or infrequent basis); or**
2. **Receive PHI, or access to PHI, from City or another Business Associate of City, as part of providing Goods and Services to or for City including legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial; or**
3. **Transmit PHI data for City and require access on a regular basis to such PHI. (Such as health information exchanges (HIEs), e-prescribing gateways, or electronic health record vendors)**

If Contractor performs one or more of the above, Contractor shall complete Attachments 1 and 2 to this Appendix B. Otherwise the forms can be left blank.

This Business Associate Agreement ("BAA") supplements and is made a part of the contract by and between the City and County of San Francisco, the Covered Entity ("CE"), and Contractor, the Business Associate ("BA") (the "Agreement"). To the extent that the terms of the Agreement are inconsistent with the terms of this BAA, the terms of this BAA shall control.

RECITALS

A. CE, by and through the City and County of San Francisco Department, wishes to disclose certain information to BA pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI") (defined below).

B. For purposes of the Agreement, CE 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 Agreement 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 corresponding 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. § 17921 and 45 C.F.R. § 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 PHI 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 (as defined below) 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 PHI 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. Attestations. Except when CE's data privacy officer exempts BA in writing, the BA shall complete the following forms, attached and incorporated by reference as though fully set forth herein, City Attestations for Privacy (Attachment 1) and Data Security (Attachment 2) within sixty (60) calendar days from the execution of the Agreement. If CE makes substantial changes to any of these forms during the term of the Agreement, the BA will be required to complete CE's updated forms within sixty (60) calendar days from the date that CE provides BA with written notice of such changes. BA shall retain such records for a period of seven (7) years after the Agreement terminates and shall make all such records available to CE within fifteen (15) calendar days of a written request by CE.

b. User Training. The BA shall provide, and shall ensure that BA subcontractors provide, training on PHI privacy and security, including HIPAA and HITECH and its regulations, to each employee or agent that will access, use, or disclose Protected Information, upon hire and/or prior to accessing, using or disclosing Protected Information for the first time, and at least annually thereafter during the term of the Agreement. BA shall maintain, and shall ensure that BA subcontractors maintain records indicating the name of each employee or agent and date on which the PHI privacy and security trainings were completed. BA shall retain, and ensure that BA subcontractors retain such records for a period of seven (7) years after the Agreement terminates and shall make all such records available to CE within fifteen (15) calendar days of a written request by CE.

c. Permitted Uses. BA may use, access, and/or 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 Agreement and BAA, or as required by law. Further, BA shall not use Protected Information 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. §§ 164.502, 164.504(e)(2), and 164.504(e)(4)(i)].

d. 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 Agreement 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(n) of this BAA, to the extent it has obtained knowledge of such occurrences [42 U.S.C. § 17932; 45 C.F.R. §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. §164.502(e)(1)(ii)].

e. Prohibited Uses and Disclosures. BA shall not use or disclose Protected Information other than as permitted or required by the Agreement 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 Protected Information solely relates [42 U.S.C. § 17935(a) and 45 C.F.R. §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 Agreement.

f. 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 Agreement 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).

g. 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.f. above with respect to Electronic PHI [45 C.F.R. § 164.504(e)(2)-(e)(5); 45 C.F.R. §164.308(b)]. BA shall mitigate the effects of any such violation.

h. 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 seven (7) 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, 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.

i. 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 § 123110] and the Privacy Rule including, but not limited to, 45 C.F.R. section 164.524 [45 C.F.R. §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. section 164.524.

j. 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. § 164.504(e)(2)(ii)(F)].

k. 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. § 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.

l. Minimum Necessary. BA, and 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. § 17935(b); 45 C.F.R. §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.

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

n. Notification of Breach. BA shall notify CE within five (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. § 17921; 42 U.S.C. §17932; 45 C.F.R. §164.410; 45 C.F.R. §164.504(e)(2)(ii)(C); 45 C.F.R. §164.308(b).]

o. 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 Agreement and this BAA and shall provide grounds for immediate termination of the Agreement and this BAA, any provision in the AGREEMENT to the contrary notwithstanding. [45 C.F.R. § 164.504(e)(2)(iii).]

b. Judicial or Administrative Proceedings. CE may terminate the Agreement 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 are made in any administrative or civil proceeding in which the Party has been joined.

c. Effect of Termination. Upon termination of the Agreement 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. § 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. Per the Secretary's guidance, the City will accept destruction of electronic PHI in accordance with the standards enumerated in the NIST SP 800-88, Guidelines for Media Sanitization. The City will accept destruction of PHI contained in paper records by shredding, burning, pulping, or pulverizing the records so that the PHI is rendered unreadable, indecipherable, and otherwise cannot be reconstructed.

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 of 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 Agreement 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 Agreement upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Agreement or this BAA when requested by CE pursuant to this Section; or (ii) BA does not enter into an amendment to the Agreement 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 access, use, or disclosure of PHI by BA, or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine, penalties, or damages within thirty (30) calendar days from City's written notice to BA of such fines, penalties, or damages.

Attachment 1 – City Privacy Attestation, version 06-07-2017
Attachment 2 – City Data Security Attestation, version 06-07-2017

BAA ATTACHMENT 1 – PRIVACY ATTESTATION

INSTRUCTIONS: Contractors and Partners who receive or have access to health or medical information or electronic health record systems maintained by the City and County of San Francisco (City) must complete this form. Retain completed Attestations in your files for a period of 7 years. Be prepared to submit completed attestations, along with evidence related to the following items, if requested to do so by City. If you believe that a requirement is Not Applicable to you, see instructions below in Section IV on how to request clarification or obtain an exception.

	I. All Contractors. DOES YOUR ORGANIZATION:	**YES**	**NO**
A	Have formal Privacy Policies that comply with the Health Insurance Portability and Accountability Act (HIPAA)?		
B	Have a Privacy Officer or other individual designated as the person in charge of investigating privacy breaches or related incidents?		
	If Yes: Name & Title:	Phone:	Email:
C	Require health information Privacy Training upon hire and annually thereafter for all employees who have access to health information? [Retain documentation of trainings for a period of 7 years.] [City privacy training materials are available for use; contact the Office of Contract Administration		
D	Have proof that employees have signed a form upon hire and annually thereafter, with their name and the date, acknowledging that they have received health information privacy training? [Retain documentation of acknowledgement of trainings for a period of 7 years.]		
E	Have (or will have if/when applicable) Business Associate Agreements with subcontractors who create, receive, maintain, transmit, or access City's health information?		
F	Assure that staff who create, or transfer health information (via laptop, USB/thumb-drive, handheld), have prior supervisorial authorization to do so **AND** that health information is **only transferred or created on encrypted devices approved by City's Information Security staff**?		
	II. Contractors who serve patients/clients and have access to City PHI, must also complete this section. DOES YOUR ORGANIZATION:		
G	Have (or will have if/when applicable) evidence that City was notified to de-provision employees who have access to City's health information record systems within 2 business days for regular terminations and within 24 hours for terminations due to cause?		
H	Have evidence in each patient's / client's chart or electronic file that a Privacy Notice that meets HIPAA regulations was provided in the patient's / client's preferred language? (English, Cantonese, Vietnamese, Tagalog, Spanish, Russian forms may be required and are available from City.)		
I	Visibly post the Summary of the Notice of Privacy Practices in all six languages in common patient areas of your treatment facility?		
J	Document each disclosure of a patient's/client's health information for purposes other than treatment, payment, or operations?		
K	When required by law, have proof that signed authorization for disclosure forms (that meet the requirements of the HIPAA Privacy Rule) are obtained PRIOR to releasing a patient's/client's health information?		

III. ATTEST: Under penalty of perjury, I hereby attest that to the best of my knowledge the information herein is true and correct and that I have authority to sign on behalf of and bind Contractor listed above.

ATTESTED by Privacy Officer or designated person	Name: (print)		Signature		Date	

IV. EXCEPTIONS: If you have answered "NO" to any question or believe a question is Not Applicable, please contact the Office of Contract Administration for a consultation. All "No" or "N/A" answers must be reviewed and approved by OCPA below

EXCEPTION(S) APPROVED by CITY	Name: (print)		Signature		Date	

BAA ATTACHMENT 2 – DATA SECURITY ATTESTATION

INSTRUCTIONS: Contractors and Partners who receive or have access to health or medical information or electronic health record systems maintained by the City and County of San Francisco (City) must complete this form. Retain completed Attestations in your files for a period of 7 years. Be prepared to submit completed attestations, along with evidence related to the following items, if requested to do so by City. If you believe that a requirement is Not Applicable to you, see instructions in Section III below on how to request clarification or obtain an exception.

	I. All Contractors. DOES YOUR ORGANIZATION:	**YES**	**NO**
A	Conduct assessments/audits of your data security safeguards to demonstrate and document compliance with your security policies and the requirements of HIPAA/HITECH at least every two years? [Retain documentation for a period of 7 years]		
B	Use findings from the assessments/audits to identify and mitigate known risks into documented remediation plans?		
	Date of last Data Security Risk Assessment/Audit:		
	Name of firm or person(s) who performed the Assessment/Audit and/or authored the final report:		
C	Have a formal Data Security Awareness Program?		
D	Have formal Data Security Policies and Procedures to detect, contain, and correct security violations that comply with the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH)?		
E	Have a Data Security Officer or other individual designated as the person in charge of ensuring the security of confidential information?		
	If Yes: Name & Title:	Phone:	Email:
F	Require Data Security Training upon hire and annually thereafter for all employees who have access to health information? [Retain documentation of trainings for a period of 7 years.] [City data security training materials are available for use; contact the Office of Contract Administration.]		
G	Have proof that employees have signed a form upon hire and annually, or regularly, thereafter, with their name and the date, acknowledging that they have received data security training? [Retain documentation of acknowledgement of trainings for a period of 7 years.]		
H	Have (or will have if/when applicable) Business Associate Agreements with subcontractors who create, receive, maintain, transmit, or access City's health information?		
I	Have (or will have if/when applicable) a diagram of how City data flows between your organization and subcontractors or vendors (including named users, access methods, on-premise data hosts, processing systems, etc.)?		

II. ATTEST: Under penalty of perjury, I hereby attest that to the best of my knowledge the information herein is true and correct and that I have authority to sign on behalf of and bind Contractor listed above.

ATTESTED by Privacy Officer or designated person	Name: (print)		Signature		Date	

III. EXCEPTIONS: If you have answered "NO" to any question or believe a question is Not Applicable, please contact the Office of Contract Administration for a consultation. All "No" or "N/A" answers must be reviewed and approved by OCA below.

EXCEPTION(S) APPROVED by CITY	Name: (print)		Signature		Date	

Appendix C

Technology Specific Term Sheets

Agreements are to be executed as applicable on a per project or purchase basis, substantially in the form of the Technology Marketplace Term Sheet Templates attached to this Agreement, which may be modified in the future. Contractor acknowledges and agrees that the terms and conditions of the executed Technology Marketplace Term Sheet shall control over the applicable City purchases and, in the event of conflicting language between the Agreement and the applicable Term Sheet(s), the terms and conditions of the Term Sheet(s) will control over the Agreement.

1. P-520 Equipment Lease Agreement Term Sheet;
2. P-629 Licensed Content Agreement Term Sheet;
3. P-640 Software Maintenance Agreement Term Sheet;
4. P-642 Software Development Term Sheet;
5. P-645 Software License and Maintenance Agreement (No Prof. Services) Term Sheet;
6. P-648 Software as a Service Agreement Term Sheet;
7. P-649 Software License, Maintenance, and Technical Services Agreement (with Professional Services) Term Sheet.

City and County of San Francisco Technology Marketplace

Equipment Lease Term Sheet

This Equipment Lease Term Sheet ("Term Sheet") is attached, and incorporated as though fully set forth therein, to each Purchase Order for equipment lease hereby issued by the City and County of San Francisco ("City") under Contractor's OCA Technology Marketplace Master Agreement ("Agreement") to which this Term Sheet is attached. The terms and conditions of the Agreement apply to this Term Sheet. Capitalized terms used in this Term Sheet that are not otherwise defined have the meanings given them in the 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 Term Sheet, it shall have the meaning herein set forth.

a. "Agreement" means the Agreement to which this Term Sheet is attached and this Term Sheet, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements, which are specifically incorporated into this Term Sheet by reference as provided herein.

b. "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and the requesting department.

c. "Contractor" or "Lessor" means Lessor. In required or standard City contracting terms, the word "Contractor" may appear, and it is to be construed as meaning the Lessor.

d. "Term Sheet" shall mean this document, the accompanying Purchase Order, all attached exhibits, and all applicable City Ordinances and Mandatory City Requirements in the Agreement that are specifically incorporated into this Term Sheet by reference, as provided herein.

e. "Purchase Order**"** means the accompanying Purchase Order and any other corresponding documents submitted by Contractor to City ("Corresponding Documents") in response to a request for quote by City for the equipment lease Services described in the Purchase Order. The Purchase Order is issued by City to Contractor pursuant to the Agreement, which is identified in the Purchase Order. The Purchase Order and all Corresponding Documents are incorporated into this Term Sheet as though fully set forth herein.

2. Term. The term of this Term Sheet shall reflect the term of the equipment lease Services set forth in the accompanying Purchase Order and corresponding documents, unless earlier terminated in accordance with the provisions of this Term Sheet or the applicable Agreement.

3. City's Payment Obligation. In no event will the City make an advance payment. In the event any payment of any amount of monies is required by any vendor or manufacturer prior to acceptance of the equipment by the City, Lessor is to advance such amounts. The City will make a good faith effort to pay all invoices within thirty days of billing. In no event will the City pay any late fees or charges for payments made after the thirty (30) day period. Lessor and the City understand and intend that the obligations of the City to pay rental payments hereunder shall constitute a current expense of the City and shall not in any way be construed to be a debt of the City in contravention of any applicable constitutional or statutory limitations or requirements concerning the creation of indebtedness by the City, nor shall anything contained herein constitute a pledge of the general tax revenues, funds, or monies of the City. The City shall pay rental payments, exclusively from legally available funds, to Lessor or, in the event of an authorized assignment by Lessor to its assignee, according to the terms of this Agreement, upon presentation of invoices furnished by Lessor in a form acceptable to the Controller. Each invoice must have a unique identifying number. Payments will be made in United States Dollars by warrant drawn on the Treasurer of City and County of San Francisco. Rental payments shall be in consideration for the City's use of the equipment during the applicable fiscal year in which such payments are due. In no event shall the amount of this Term Sheet exceed the amount stated in the Agreement. The breakdown of costs associated with this Term Sheet appears in the Agreement between City and Contractor, to which this Term Sheet is attached.

4. Maintenance. Unless otherwise specified by the Purchase Order or its Corresponding Documents, the City shall be responsible for all service, repair, and maintenance of the equipment. If the City is responsible for service, repair, and maintenance, the City, at its sole cost and expense, shall keep the equipment in good operating order, repair, condition, and appearance and shall furnish any and all parts, mechanisms, or devices required to keep the equipment in good mechanical and working order. If the City deems it necessary, the City shall enter into an appropriate maintenance service agreement covering all items of equipment and shall maintain maintenance service on the equipment for the term of this Term Sheet, for which payment shall be due and payable by the City.

5. Use, Licenses. The City will not use or operate the equipment leased under this Term Sheet and the Agreement improperly, carelessly, in violation of any applicable law, or in a manner contrary to that contemplated by this Term Sheet or the Agreement.

6. Delivery of Equipment; Transportation. It is the responsibility of the Lessor to arrange with the manufacturer and/or vendor for the delivery and any installation of the equipment. Charges for delivery and installation are the responsibility of the Lessor. However, the City will reimburse Lessor for reasonable delivery and installation charges after the equipment leased under this Term Sheet and the Agreement is accepted and upon proper presentation of invoices unless such charges are included in the cost of the equipment. The equipment to be provided under this Term Sheet and the Agreement is to be delivered to a location as designated by the City and installed and made ready for operation.

7. Installation. If Installation is applicable, the Lessor will arrange with the manufacturer and/or vendor to prepare site, obtain all permits and licenses, if any, necessary for the installation and operation of the equipment, furnish, assemble and install the equipment as necessary at the

location as designated by the City. Manufacturer and/or vendor must comply with all State laws and local ordinances in installing the equipment.

8. Relocation of Equipment. Lessor agrees that the City may upon reasonable notice to Lessor, relocate the equipment or any item or items thereof to any location or locations within the geographical boundaries of the City where the City has offices at the City's sole discretion and cost. Prior to any such relocation the City agrees to execute or obtain and to deliver to Lessor such documents, which Lessor reasonably requests to protect Lessor's right, title, and interest in the equipment.

9. Lessor's Removal and the City's Surrender of the Equipment. At the end of the term of this Term Sheet or the Agreement, or unless sooner terminated, the City agrees to surrender the equipment in as good a condition as when furnished, reasonable wear and tear excepted. Lessor agrees, at Lessor's cost to accept and remove the equipment as provided in this Term Sheet and the Agreement. Lessor's failure to accept and remove the equipment shall entitle the City to remove the equipment and place it in any storage facility in San Francisco at Lessor's sole expense, and Lessor shall hold the City free and harmless from any expense or damages of any kind occasioned thereby and arising therefrom.

10. Force Majeure. Lessor shall not be liable for failure to furnish equipment ready for use on the date specified or to remove in accordance with the terms of this Term Sheet and the Agreement, nor shall City be liable for delay in installation or removal when such failures are due to causes beyond the reasonable control of either such as acts of God, acts of civil or military authority, fires, strikes, floods, epidemics, quarantine, war, riot, delays in transportation, care shortages, and inability due to causes beyond its reasonable control to obtain necessary labor, materials or manufacturing facilities, and in such event the party under obligations to perform shall perform as soon as such cause is removed.

11. The City's Right to Use Other Equipment Simultaneously with the Equipment. The City does not grant Lessor an exclusive right during the term of this Term Sheet and the Agreement to supply the City with any other equipment. The City reserves the right to lease or purchase similar or different equipment from any other supplier or lessors, which may be used contemporaneously with any item of equipment leased hereunder.

12. Disclaimer of Warranties. Lessor hereby assigns to the City for and during the term of this Term Sheet and the Agreement, to the extent permitted by law, all manufacturer's or vendor's warranties or guaranties, express or implied, issued on or applicable to the equipment leased under this Term Sheet and the Agreement, and Lessor authorizes the City to obtain the customary services furnished in connection with such warranties or guaranties at the City's expense. Lessor authorizes the City, to the extent permitted by law, to enforce in its own name any warranty, representation, or other claim enforceable against the manufacturer or vendor. The City acknowledges that the equipment has been purchased by Lessor on behalf of the City in accordance with the City's specifications. The City shall look directly to the manufacturer or vendor for any warranties or any service for the equipment.

13. Enjoyment of the Equipment. Provided that and so long as the City is not in default under this Lease, Lessor hereby covenants to provide the City during the term of this Term Sheet and the Agreement with quiet use and enjoyment of the equipment, and the City shall during the term of this Term Sheet and the Agreement peaceably and quietly have and hold and enjoy the equipment, without suit, trouble or hindrance from Lessor, except as expressly set forth in this Term Sheet and the Agreement. Any assignee of Lessor shall not interfere with the City's quiet use and enjoyment during the term of this Term Sheet and the Agreement so long as the City is not in default pursuant to this Term Sheet and the Agreement.

14. Title to the Equipment. Title to the equipment and any and all additions, repairs, replacements, or modifications thereto shall be held in the name of Lessor, and the City shall have no right, title, or interest in the equipment or any additions, repairs, replacements, or modifications thereto except as expressly set forth in this Term Sheet and the Agreement.

15. Liability for Damage to Equipment. It is understood and agreed that the City is responsible for loss of or damage to any Lessor owned equipment involved, only as caused by the negligent or wrongful actions of City's officers, agents, and employees.

16. Taxes. The City will only pay California sales and use taxes. The Lessor is to add California sales and use taxes to the monthly payment and the tax must be properly identified on each monthly invoice. Any other taxes presently in effect that may be levied upon this Term Sheet, a Technology Marketplace Transaction, or the equipment or Services delivered pursuant hereto shall be borne by the Lessor. The Lessor will be responsible for all property taxes. In the event any taxes or charges are enacted after the date of execution of this Term Sheet and the accompanying Purchase Order, those taxes or charges shall be borne as mutually agreed. The Lessor will indemnify and hold City harmless from any fines, penalties, or interest thereon imposed during the term of this Term Sheet and the accompanying Purchase Order, or in connection with termination of this Term and the accompanying Purchase Order by any federal, State, or local government or taxing authority. The taxes covered by this Section shall only include those attributable to the equipment. Under no circumstances will the City pay any taxes imposed on, based on, or measured by the net income of the Lessor.

17. Assignment. Notwithstanding any other provision in this Term Sheet, in no event shall all or any portion of this Term Sheet or the accompanying Purchase Order be assigned without the prior written approval of Purchasing and the City Attorney. Furthermore, in no event shall Lessor effect a public offering of certificates of participation, municipal securities, or other debt instruments presenting fractionalized interests in this Term Sheet and the accompanying Purchase Order. For purposes of this Section, a public offering shall occur when the certificates of participation, municipal securities, or other debt instruments are either: (a) offered or sold to more than twenty investors; or (b) offered or sold in denominations of less than $10,000.

City and County of San Francisco Technology Marketplace

Licensed Content Term Sheet

This Licensed Content Term Sheet ("Term Sheet") is attached, and incorporated as though fully set forth therein, to each Purchase Order for licensed content hereby issued by the City and County of San Francisco ("City") under Contractor's OCA Technology Marketplace Master Agreement to which this Term Sheet is attached ("Agreement"). Capitalized terms used in this Term Sheet that are not otherwise defined have the meanings given them in the Agreement.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Term Sheet:

1.1 "Agreement" means the Agreement to which this Term Sheet is attached and this Term Sheet, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Term Sheet by reference as provided herein.

1.2 "Authorized Users" means a person authorized by City to access the Licensed Content, including any City employee, contractor or agent, or any other individual or entity authorized by City.

1.3 "City" or "the City" or "Licensee" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and the requesting department.

1.4 Reserved.

1.5 "Contractor" or "Content Provider" means Licensor. In required or standard City contracting terms, the word "Contractor" may appear, and it is to be construed as meaning the Licensor.

1.6 "Licensed Content", "Licensed Materials", or "Deliverables" mean(s) the deliverables provided to City during the course of Licensor's performance of this Term Sheet and the Agreement, including without limitation, the content and information published by Licensor, as set forth in the accompanying Purchase Order and made accessible to Authorized Users under this Term Sheet and the Agreement.

1.7 "Licensor" means the Contractor with whom the City has entered into the Agreement and the entity to whom a Purchase Order is hereby issued for the purchase of one or more perpetual software licenses.

1.8 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.9 "Party" or "Parties" means, respectively, the City and Contractor either individually or collectively.

1.10 "Purchase Order" means the accompanying Purchase Order and any other corresponding documents submitted by Contractor to City ("Corresponding Documents") in response to a request for quote by City for the Licensed Content Services described in the Purchase Order. The Purchase Order is issued by City to Contractor pursuant to the Agreement, which is identified in the Purchase Order. The Purchase Order and all Corresponding Documents are incorporated into this Term Sheet as though fully set forth herein.

1.11 "Term Sheet" means this document, the accompanying Purchase Order, all attached exhibits, and all applicable City Ordinances and Mandatory City Requirements in the Agreement that are specifically incorporated into this Term Sheet by reference as provided herein.

Article 2 Term of the Agreement

2.1 The term of this Term Sheet shall reflect the term of the Licensed Content Services set forth in the accompanying Purchase Order and Corresponding Documents, unless earlier terminated in accordance with the provisions of this Term Sheet or the applicable Agreement.

Article 3 Services and Resources

3.1 **Services Contractor Agrees to Perform/Licensor Performance Obligations.** Contractor agrees to perform the Services stated in the scope of work attached to the accompanying Purchase Order. Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for Services beyond the scope of work attached to the accompanying Purchase Order, unless the accompanying Purchase Order is modified as provided in Section 11.5 of the Agreement, "Modification of this Agreement."

3.1.1 **Availability of Licensed Materials.** After the City has received and approved the Licensed Materials, Licensor shall make the Licensed Materials available to Authorized Users.

3.1.2 **Documentation.** Licensor will provide and maintain help files and other appropriate user documentation including, but not limited to, user guides.

3.1.3 **Quality of Service.** Licensor shall use reasonable efforts to provide continuous service. Permissible down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or Services outside the control of Licensor including, but not limited to, public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users.

3.1.4 **Downtime/Nonconformity of Licensed Materials.** If the Licensed Materials fail to operate in conformance with the terms of this Term Sheet and the Agreement, Licensee shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Licensee in an amount

that the nonconformity is proportional to the total payment owed by Licensee under this Term Sheet and the Agreement.

3.1.5 **Withdrawal of Licensed Materials.** Licensor reserves the right to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful, or otherwise objectionable. Licensor shall give written notice to the Licensee of such withdrawal no later than 30 days following the removal of any item pursuant to this Section. If any such withdrawal renders the Licensed Materials less useful to Licensee or its Authorized Users, Licensor shall reimburse Licensee in an amount that the withdrawal is proportional to the total payment owed by Licensee under this Term Sheet and the Agreement.

3.1.6 Usage Data. If requested, Licensor shall provide to Licensee statistics regarding the usage of the Licensed Materials by Licensee and/or its Authorized Users according to the then current standards in the industry

3.2 **Subcontracting.** Licensor will be responsible for provision of all content. Licensor's agreements with other licensors to provide content will not be considered subcontracting, unless content is specifically obtained for the purposes of fulfilling the obligations of this Term Sheet and the Agreement.

3.3 **Warranty.** Licensor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Term Sheet and the Agreement.

3.4 **Warranties: Right to Grant License.** Licensor warrants that it has the right to license the rights granted under this Term Sheet and the Agreement to use Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Term Sheet and the Agreement shall not infringe the copyright of any third party.

Article 4 Intellectual Property Rights and Restrictions

4.1 **Copyrighted Works.** Except for the specific rights granted herein, all right, title and interest, including copyrights to the Licensed Materials, are owned exclusively by Licensor and its licensors. All rights in respect thereof are reserved to Licensor and such licensors. Through this Term Sheet and the Agreement, Licensee obtains certain limited rights to the Licensed Materials, but Licensee does not obtain or own any rights in the copyrights or any other intellectual property rights that may be associated with such Licensed Materials.

4.2 **Authorized Uses.**

4.2.1 **Grant of License.** Licensor grants to Licensee a non-exclusive, non-transferable license to access, use, copy, and display the Licensed Content for its own internal business purposes. Licensee will use its best efforts to not use, sell, modify, publish, distribute, or allow any third party to use, sell, modify, publish, or distribute the Licensed Content. In the event where applicable public records law require disclosure that would violate this Section, both

Parties acknowledge the supremacy of public records law, and Licensee will work with Licensor to minimize disclosure.

4.2.2 **Fair Use.** Notwithstanding anything to the contrary in this Term Sheet and the Agreement, no term or provision of this Term Sheet and the Agreement shall be interpreted to limit or restrict the rights of Licensee and its Authorized Users, including Fair Use Rights, as provided by U.S. Copyright Act Sections 107 and 108 and other applicable intellectual property law. Notwithstanding anything to the contrary in this Term Sheet and the Agreement, Authorized Users shall not be restricted from extracting or using information contained in the Database for its municipal purposes, nonprofit educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis, if not engaged in for the purposes of commercial competition.

4.2.3 **Reserved (Public Facing Content).**

4.2.4 **Confidentiality of User Data.** Licensor agrees to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized Users. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. Raw usage data including, but not limited to, information relating to the identity of specific users and/or uses, shall not be provided to any third party.

4.3 **Specific Restrictions on Use of Licensed Materials.**

4.3.1 **Unauthorized Use.** Except as specifically provided elsewhere in this Term Sheet and the Agreement, Licensee shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials.

4.3.2 **Removal of Copyright Notice.** Licensee may not remove, obscure, or modify any copyright or other notices included in the Licensed Materials.

4.3.3 **Commercial Purposes.** Other than as specifically permitted in this Term Sheet and the Agreement, Licensee may not use the Licensed Materials for commercial purposes including, but not limited to, the sale of the Licensed Materials or bulk reproduction or distribution of the Licensed Materials in any form.

Article 5 General Provisions

5.1 **Modification of this Term Sheet.**

5.1.1 **Notification of Modifications of Licensed Materials.** Licensee understands that from time to time the Licensed Materials may be added to, modified, or deleted by Licensor and/or that portions of the Licensed Materials may migrate to other formats. Licensor shall give prompt notice of any such modifications to Licensee. If the Licensor fails to provide such reasonable notice, Licensee may treat the failure as a material breach of this Term Sheet and the Agreement. If any modifications render the Licensed Materials less useful to the Licensee or its Authorized Users, the Licensee may treat such modifications as a material breach of this Term Sheet and the Agreement. Licensor will provide, for the use of Licensee and Authorized Users, whatever improvements, enhancements, extensions, and other changes to the Licensed Materials Licensor may develop.

5.1.2 **Notice of "Click-Through" License Terms or Other Means of Passive Assent.** For Authorized Users, this Term Sheet and the Agreement shall expressly supersede any click-through, click-on, "Screen Wrap", or other user agreement appearing on the Licensor's site. Licensor will not require any authorized Licensee user to agree to any other terms or conditions not included in this written contract. Violation of this provision constitutes a material breach of this Term Sheet and the Agreement.

City and County of San Francisco Technology Marketplace

Software Maintenance Term Sheet

This Software Maintenance Term Sheet ("Term Sheet") is attached, and incorporated as though fully set forth therein, to each Purchase Order for software maintenance Services hereby issued by the City and County of San Francisco ("City") under Contractor's OCA Technology Marketplace Master Agreement to which this Term Sheet is attached ("Agreement"). Capitalized terms used in this Term Sheet that are not otherwise defined have the meanings given them in the Agreement.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Term Sheet:

1.1 "Agreement" means the Agreement to which this Term Sheet is attached and this Term Sheet, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements, which are specifically incorporated into this Term Sheet by reference as provided herein.

1.2 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and the requesting department.

1.3 "Contractor" means the Contractor with whom the City has entered into the Agreement and the entity to whom a Purchase Order is hereby issued for the purchase of software maintenance Services.

1.4 "Documentation" means the technical publications relating to the use of the Licensed Software, such as reference, installation, administrative, and programmer manuals provided by Contractor to City.

1.5 "Errors, Defects, and Malfunctions" means either a deviation between the function of the Software (as defined below) and the Documentation furnished by Contractor for the Software, or a failure of the Software that degrades the use of the Software.

1.6 "Fix" means repair or replacement of source, object, or executable code in the Software to remedy an Error, Defect, or Malfunction.

1.7 "Licensed Software" or "Software" means one or more of the proprietary computer software programs identified in Appendix A of the Agreement and/or accompanying Purchase Orders, all related materials, Documentation, all corrections, patches or updates thereto, and other written information received by City from Contractor, whether in machine-readable or printed form. The Appendix A of the Agreement and/or accompanying Purchase Order may identify more than one software product or more than one copy of any product.

1.8 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.9 "Party" or "Parties" means, respectively, the City and Contractor either individually or collectively.

1.10 "Patch" means a temporary repair or replacement of code in the Software to remedy an Error, Defect, or Malfunction. Patches may be made permanent and released in Subsequent Releases (as defined below) of the Software.

1.11 "Priority Category" means a priority assigned to an Error, Defect, or Malfunction designating the urgency of correcting an Error, Defect, or Malfunction. Assignment of a Priority Category to an Error, Defect, or Malfunction is based on City's determination of the severity of the Error, Defect, or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect, or Malfunction.

1.12 "Priority Protocol" means a priority based on the Priority Category; rules specifying the turnaround time for correcting Errors, Malfunctions, and Defects; escalation procedures; and personnel assignment.

1.13 "Purchase Order" means the accompanying Purchase Order and any other corresponding documents ("Corresponding Documents") in response to a request for quote by City for the software maintenance Services described in the Purchase Order. The Purchase Order is issued by City to Contractor pursuant to the Agreement. The Purchase Order and all Corresponding Documents are incorporated into this Term Sheet as though fully set forth herein.

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

1.15 "Support Services" means the Software support service required under this Term Sheet and the Agreement. Support Services include correcting an Error, Defect, or Malfunction; providing telephone and/or online support concerning the installation and use of the Software; training in the installation and use of the Software; on-site consulting and application development services; detection, warning, and correction of viruses; and disabled/disabling code.

1.16 "Term Sheet" means this document, the accompanying Purchase Order, all attached exhibits, and all applicable City Ordinances and Mandatory City Requirements in the Agreement that are specifically incorporated into this Term Sheet by reference as provided herein.

1.17 "Upgrade" means either an enhancement to the Software code to add new features or functions to the system or software programming revisions containing corrections to Errors, Defects, and Malfunctions that have been reported by users or discovered by the Contractor.

1.18 "Warranty Period" means a period commencing with the installation of the Software product during which reported Errors, Defects, and Malfunctions for Software products are corrected without charge in accordance with the provisions below.

1.19 "Workaround" means a change in the procedures followed or end user operation of the Software to avoid an Error, Defect, or Malfunction without significantly impairing functionality or degrading the use of the Software.

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 City. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the City, unless otherwise indicated by the context.

Article 2 Term of the Term Sheet

2.1 **Term of Licensed Software Maintenance Support Services.** The term of this Term Sheet shall reflect the term of the Support Services set forth in the accompanying Purchase Order and Corresponding Documents, unless earlier terminated in accordance with the provisions of this Term Sheet or the applicable Agreement.

(a) **Charges for Maintenance and Support Services.**

(1) **Limited Term License.** When the license term specified in the Purchase Order and Corresponding Documents is less than perpetual, all charges for maintenance and Support Services are included in the periodic license or rental fee.

(2) **Perpetual License.** Where the license term specified in the Purchase Order and Corresponding Documents is perpetual, all charges for maintenance and Support Services are as stated in the Purchase Order and Corresponding Documents.

(3) **Periodic Payment License.** If the license fee specified in the Authorization Document is payable in periodic payments, there will be no additional charge for maintenance and Support Services during the period for which such periodic payments are payable or the first year of the term, whichever is longer.

(4) **Lump Sum Payment Licenses.** If the license fee specified in the Authorization Document is payable in one lump sum, there will be no additional charge for the maintenance and Support Services during the first year of the term.

(b) **Annual Maintenance and Support Charges.** Annual maintenance and Support Services charges shall not increase more than the amount stated in the accompanying Purchase Order. Notwithstanding the foregoing, if not stated in the accompanying Purchase Order, then Support Services charges shall not increase more than five percent (5%) of the rate of the year immediately prior to such increase. Contractor will make maintenance and Support Services available to City for the duration stated in the Purchase Order.

Article 3 License

3.1 **Grant of License.** The Parties hereby acknowledge the City's previous payment of the applicable one-time license fee, receipt of which is hereby acknowledged by Contractor. Contractor did grant and continues to grant City a non-exclusive and non-transferable perpetual

license to use the Licensed Software listed in Appendix A of the Agreement. City acknowledges and agrees that the Licensed Software is the proprietary information of Contractor and that this Term Sheet and the Agreement grants City no title or right of ownership in the Licensed Software.

Article 4 Services and Resources

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the maintenance and Support Services provided for in this Term Sheet and the Agreement.

Article 5 Software Maintenance

5.1 **Maintenance and Support Services.**

5.1.1 **Maintenance and Support Services.** After Acceptance of the Licensed Software and subject to the terms, conditions, and charges set forth in this Section 5.1.1, Contractor will provide City with maintenance and Support Services for the Licensed Software as follows: (i) Contractor will provide such assistance as necessary to cause the Licensed Software to perform in accordance with the Specifications as set forth in the Documentation; (ii) Contractor will provide, for City's use, whatever improvements, enhancements, Upgrades, extensions, and other changes to the Licensed Software Contractor may develop; and (iii) Contractor will update the Licensed Software, as required, to cause it to operate under new versions or releases of the operating system specified in this Term Sheet and the Agreement so long as such updates, or Upgrades, are made generally available to Contractor's other licensees.

5.2 During the term of this Maintenance Agreement, Contractor will furnish Error, Defect, or Malfunction correction in accordance with the Priority Categories listed below, based on the City's determination of the severity of the Error, Defect, or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect, or Malfunction.

5.2.1 **Priority 1:** An Error, Defect or Malfunction, which renders the Software inoperative, or causes the Software to fail catastrophically.

5.2.2 **Priority 2:** An Error, Defect or Malfunction, which substantially degrades the performance of the Software, but does not prohibit the City's use of the Software.

5.2.3 **Priority 3:** An Error, Defect or Malfunction, which causes only a minor impact on the use of the Software.

5.3 Contractor will furnish Error, Defect, or Malfunction correction in accordance with the following protocols:

5.3.1 **Priority 1 Protocol:** Within two hours, Contractor assigns a product technical specialist(s) to diagnose and correct the Error, Defect, or Malfunction; thereafter, Contractor shall provide ongoing communication about the status of the correction; shall proceed to immediately provide a Fix, a Patch, or a Workaround; and exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect, or Malfunction in the next Subsequent Release. Contractor will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect, or Malfunction is corrected.

5.3.2 **Priority 2 Protocol:** Within four hours, Contractor assigns a product technical specialist(s) to diagnose the Error, Defect, or Malfunction and to commence correction of the Error, Defect, or Malfunction; to immediately provide a Workaround; to provide escalation procedures as reasonably determined by Contractor's staff; and to exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect, or Malfunction in the next Software maintenance release.

5.3.3 **Priority 3 Protocol:** Contractor may include a Fix or Patch in the next Software major release.

5.4 **Hotline Support.** Contractor shall provide remote access hotline support to City to help City answer routine questions with respect to the use of the Software. Contractor also shall provide remote access hotline support to City to initiate resolution of Priority 1 and Priority 2 Errors, Defects, and Malfunctions. Hotline support shall be made available by phone between the hours of 8 a.m. and 6 p.m. Pacific time Monday through Friday, except legal holidays. Hotline support shall be available by electronic bulletin board, electronic mail, or other service twenty-four (24) hours a day, seven (7) days a week. Responses to questions posted by electronic means will be made within the time frame established under Priority Protocols for an Error, Defect, or Malfunction in a Software Product.

City and County of San Francisco Technology Marketplace

Software Development Term Sheet

This Software Development Term Sheet ("Term Sheet") is attached, and incorporated as though fully set forth therein, to each Purchase Order for software development hereby issued by the City and County of San Francisco ("City") under Contractor's OCA Technology Marketplace Master Agreement to which this Term Sheet is attached ("Agreement"). Capitalized terms used in this Term Sheet that are not otherwise defined have the meanings given them in the Agreement.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Term Sheet, it shall have the meaning herein set forth. 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 City. The words "sufficient", "necessary", or "proper", and the like, mean sufficient, necessary or proper in the judgment of the City, unless otherwise indicated by the context. The following definitions apply to this Term Sheet:

1.1 "Acceptance" means notice from the City to Contractor that the Licensed or developed software meets the specifications contained in the Documentation. City's Acceptance of the Licensed or developed software shall be governed by the procedures set forth in Article 4 ("Services, Software Implementation, and Acceptance").

1.2 "Acceptance Tests" means the procedures and performance standards required for Acceptance by City of the Programs and the System as defined herein. These procedures and performance standards are set forth in the Purchase Order and Corresponding Documents.

1.3 "Acceptance Window" means the time period in the Purchase Order and Corresponding Documents following completion of a Deliverable, during which Contractor must secure Acceptance of the completed Work from City.

1.4 "Agreement" means the Agreement to which this Term Sheet is attached and incorporated and this Term Sheet, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements, which are specifically incorporated into the Agreement by reference as provided herein, together with any future written and executed amendments.

1.5 "Change Order" means a written instrument signed by the City's Project Manager that modifies this Term Sheet and the Agreement through an adjustment to one or more of the following: (i) the Project Schedule, (ii) the scope of work, (iii) the Acceptance Criteria, or (iv) other requirements specified in this Term Sheet and the Agreement.

1.6 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and the requesting department.

1.7 "Confidential Information" means confidential City information including, but not limited to, personal identifiable information ("PII"), protected health information ("PHI"), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M.

1.8 "CMD" means the Contract Monitoring Division of the City.

1.9 "Contractor" or "Consultant" means the Contractor with whom the City has entered into the Agreement and the entity to whom a Purchase Order is hereby issued for the purchase of the Services to be performed under this Term Sheet, the Purchase Order, and Corresponding Documents.

1.10 "Critical Milestones" means those milestones specified in the Project Schedule, issued pursuant to the Purchase Order and Corresponding Documents, as Critical Milestones after which liquidated damages apply for failure to complete performance in accordance with this Term Sheet and the Agreement.

1.11 "Deliverables" means those items described and itemized in the accompanying Purchase Order and Corresponding Documents, which items Contractor commits to provide to City on the dates specified in the Implementation Plan.

1.12 "Design Specifications" means the written design specifications to be prepared by Contractor to implement the Functional Specifications. The Design Specifications shall include descriptions of each Program to be developed hereunder together with descriptions of the hardware and software environment in which such Programs may be operated and the files or databases, if any, with which such Programs shall function.

1.13 "Documentation" means the technical publications relating to use of the System, such as reference, installation, administrative, maintenance, and programmer manuals, provided by Contractor to City.

1.14 "Equipment" means the central processing unit[s] and associated peripheral devices or computer hardware on which the Programs will operate and with which the Programs must be compatible, to be purchased or leased by Contractor for City or provided by City.

1.15 "Errors, Defects, and Malfunctions" means either a deviation between the function of the developed Programs and the documentation furnished by Contractor for the Programs, or a failure of the Programs which degrades the use of the Programs.

1.16 "Fix" means repair or replace source, object, or executable code in the Programs to remedy an Error, Defect, or Malfunction.

1.17 "Functional Specifications" means the written description of City's requirements, operations, and procedures, which document is to be prepared by Contractor, and upon approval by City, shall form the basis for the Design Specifications as defined herein.

1.18 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, that impose specific duties and obligations upon Contractor.

1.19 "Party" or "Parties" means, respectively, the City and Contractor either individually or collectively.

1.20 "Patch" means temporary repair or replacement of code in the Programs to remedy an Error, Defect, or Malfunction. If Contractor will own the Programs and license them to City, patches may be made permanent and released in Subsequent Releases of the Software.

1.21 "Performance Specifications" means the description of the minimum System characteristics and performance, which must be achieved by the Functional Specifications.

1.22 "Priority Category" means a priority assigned to an Error, Defect or Malfunction, designating the urgency of correcting an Error, Defect, or Malfunction. Assignment of a Priority Category to an Error, Defect, or Malfunction is based on City's determination of the severity of the Error, Defect, or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect, or Malfunction.

1.23 "Priority Protocol" means a Priority Protocol that is based on the Priority Category; rules specifying the turnaround time for correcting Errors, Malfunctions, and Defects; escalation procedures; and personnel assignment.

1.24 "Programs" or "Software" means the software developed by Contractor and delivered to City, in the form of machine-executable instructions, to operate on the Equipment for purposes of accomplishing the functional capabilities set forth in Performance Specifications.

1.25 "Project Schedule" means the schedule for Contractor's completion of all phases of Work, and the Critical Milestones associated with such completion as specified in this Term Sheet and the Agreement.

1.26 "Proposal" means the written proposal Contractor submitted in response to City's request for the Services to be performed under this Term Sheet.

1.27 "Purchase Order" means the accompanying Purchase Order and any other corresponding documents ("Corresponding Documents") in response to a request for quote by City for the software development Services described in the Purchase Order. The Purchase Order is issued by City to Contractor pursuant to the Agreement, which is identified in the Purchase Order. The Purchase Order and all Corresponding Documents are incorporated into this Term Sheet as though fully set forth herein.

1.28 "Review Period" means the time period during which City shall review the completed Work with respect to the scope of work issued pursuant to the accompanying Purchase Order, and give notice to Contractor of its acceptance or rejection of the completed phase.

1.29 "Scope of Work" means the document prepared by Contractor outlining the Services to be performed pursuant to the Purchase Order. The Scope of Work shall include all items, including, but not limited to: project summary, project managers, notice procedures, Services to be performed, Performance Specifications, Project Schedule and milestones (including Critical Milestones), Deliverables, Documentation, and property rights.

1.30 "Services" means the work performed by Contractor under this Term Sheet and the Agreement, including all services, labor, supervision, materials, equipment, actions, and other requirements to be performed and furnished by Contractor under this Term Sheet and the Agreement.

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

1.32 "Support Services" means the support service performed at the option of City. Support Services include correcting an Error, Defect, or Malfunction; providing telephone and/or online support concerning the installation and use of the Programs; training in the installation and use of the Programs; on-site consulting and application development services; detection, warning, and correction of viruses; and disabled/disabling code.

1.33 "System" means the Programs prepared by Contractor for City and the Equipment on which those Programs operate, the combination of which shall satisfy the requirements set forth in the Performance Specifications.

1.34 "Term Sheet" means this document, the accompanying Purchase Order, all attached appendices, and all applicable City Ordinances and Mandatory City Requirements in the Agreement that are specifically incorporated into this Term Sheet by reference as provided herein.

1.35 "Upgrade" means either an enhancement to the Programs code to add new features or functions to the system or software programming revisions containing corrections to Errors, Defects, and Malfunctions that have been reported by users or discovered by the Contractor.

1.36 "Version Locking" means a mechanism that restricts access to a computer file by allowing only one user or process access at any specific time.

1.37 "Warranty Period" means a period commencing with the installation of the Software product during which reported Errors, Defects, and Malfunctions for Software products are corrected without charge in accordance with the provisions below.

1.38 "Work" means the implementation, assembly, installation, optimization, and integration as required by the Purchase Order and Corresponding Documents, whether completed or partially completed, including all labor, materials, and Services provided or to be provided, by Contractor to fulfill its obligations hereunder. The Work, therefore, constitutes all of the requirements for providing the System to the City.

1.39 "Workaround" means a change in the procedures followed or end user operation of the Software to avoid an Error, Defect, or Malfunction without significantly impairing functionality or degrading the use of the Software.

Article 2 Term of the Term Sheet

2.1 The term of this Term Sheet shall reflect the term of software development Services set forth in the accompanying Purchase Order and Corresponding Documents, unless earlier terminated in accordance with the provisions of this Term Sheet or the applicable Agreement.

Article 3 Financial Matters

3.1 **Retention.** The final payment of ten percent (10%) of the software development and license costs shall be paid thirty (30) days after City issues its notice of Acceptance of the System.

Article 4 Services, Software Implementation, and Acceptance

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for in the Appendices of the Agreement, the accompanying Purchase Order, and Corresponding Documents. Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for Services beyond the Scope of Work attached to the accompanying Purchase Order, unless the accompanying Purchase Order is modified as provided in Section 11.5 of the Agreement, "Modification of this Agreement."

4.2 **Software Implementation.**

4.2.1 **Program Development.** Subject to the terms and conditions of this Term Sheet and the Agreement, and in consideration for the payments to be made, Contractor agrees to design, develop, and install the Programs in the following discrete and sequential phases. In Phase 1, Contractor will develop Functional Specifications; in Phase 2, Contractor will create the Design Specifications; and in Phase 3, Contractor will code the Programs, install the completed System at City's site, and deliver the Documentation for the System. The Work covered under each phase is specified in the Appendices of the Agreement, Purchase Orders, and Corresponding Documents. Upon completion of Phase 3, the System will be subject to Acceptance Testing to verify conformity with the Design Specifications.

4.2.2 **Interpretation of the Specifications.** The City hereby acknowledges that the Functional Specifications will, upon acceptance by the City, provide the basis for the Design Specifications, and that the Design Specifications will, upon acceptance by the City, provide the basis for the coding and installation of the Programs. In the event of a variance between the written proposal Contractor submitted in response to City's request for the Services to be performed under this Term and Sheet and the Agreement (the "Proposal") and the Functional Specifications, the Functional Specifications shall be determinative. In the event of a variance between the Functional Specifications and the Design Specifications, the Design Specifications shall be determinative.

4.2.3 **Interpretive Differences.** In the event City and Contractor differ in their interpretations of the Proposal, Functional Specifications, Design Specifications, or Acceptance Tests, City's interpretation, if reasonable, shall be determinative.

4.2.4 **Change Orders.**

(a) **City Proposed Change Order.** The City may at any time, by written order, and without notice to Contractor's sureties, submit a Change Order to Contractor. Within ten (10) working days of receiving a proposed Change Order, Contractor shall submit to City a written cost estimate, which shall include any adjustments to the Project price, the Project Schedule, the Statement of Work, the Acceptance Criteria, or any other obligations of Contractor as applicable.

4.3 **Acceptance Procedure.**

4.3.1 **Acceptance of Phases.** Upon completion of Phases of Program development, City shall, within the Review Period, review and give notice to Contractor of City's acceptance or rejection of the specifications of each completed phase of Work. Should City reject the Work of any Phase, then City is entitled to another Review Period upon receipt from Contractor of the revised Phase specifications. In the event that Contractor fails to provide Work for any Phase, which meets the Acceptance Criteria of this Term Sheet and the Agreement during the Acceptance Window, City may, at its option, assess Liquidated Damages per Section 4.7 of the Agreement and/or terminate the accompanying Purchase Order or the Agreement under Section 8.2 of the Agreement, Termination for Default; Remedies.

4.3.2 **Final Acceptance of System.** Upon completion the final phase, City and Contractor shall conduct Acceptance Testing of the System in accordance with the Acceptance Test Plan. City will not be deemed to have accepted any Program or the System until Contractor receives written notice of Acceptance from City.

4.3.3 **Data Conversion.** Contractor shall be responsible for the timely and accurate conversion of City's data to the format required by the Programs or System, and for providing the test data specified in the Acceptance Test Plan or Design Specifications.

4.3.4 **Contractor's Assistance in Acceptance Tests.** Contractor must furnish all materials, equipment, and technical assistance necessary to conduct the Acceptance Tests. Test Equipment provided by Contractor for performance of the Acceptance Tests shall be currently certified as "calibrated" by the test equipment manufacturer, or its authorized calibration service agent. (*See Section 4.5 below*)

4.3.5 **Failure to Pass Acceptance Tests.** In the event that City determines that the System fails to meet the standards set forth in the Acceptance Test Plan, City shall promptly report to Contractor each deficiency, and Contractor will correct the reproducible aspects of the problem or failure within the number of days specified in the Appendix A of the Agreement, Purchase Order, and corresponding documents from date of Contractor's receipt of notice of the problem or failure. Problems or failures that do not re-occur or cannot be repeated by Contractor, or by the City in Contractor's presence, shall not be considered a failure. In the event that Contractor cannot achieve System Acceptance within the number of days specified in the Appendices of Agreement, Purchase Order, and Corresponding Documents following the commencement of Acceptance Testing, Contractor shall be in default under this Term Sheet and

the Agreement and, in addition to those remedies set forth in Article 8 entitled "Termination and Default", City is further entitled to a refund of all payments made to Contractor under the accompanying Purchase Order and the Agreement.

4.3.6 **Parallel Processing.** The Parties contemplate that parallel processing will be used until both the Programs or the System, and its backup have completed the Acceptance Tests.

4.4 **Documentation Delivery and Training.**

4.4.1 **Documentation Delivery.** Contractor will deliver copies of the completed Documentation for the Programs or the System in accordance with the Appendix A of the Agreement, the Purchase Order, and corresponding documents. The City may withhold its issuance of the notice of final Acceptance until City receives the completed Documentation.

4.4.2 **City Training.** If requested by City through a Task Order, Contractor will provide training in accordance with said Task Order

4.5 **Project Administration.**

4.5.1 **Project Schedule.** The Project Schedule is set forth in the accompanying Purchase Order and/or Corresponding Documents, and may be amended by mutual agreement between City and Contractor.

(a) **Delays.** To prevent slippage in the completion of the project, Contractor agrees that if such slippage occurs, it will assign additional qualified personnel to the project.

(b) **Time of the Essence.** The Parties agree that time is of the essence, and that the System will be developed and implemented in accordance with the Project Schedule.

(c) **Critical Milestones.** Contractor acknowledges and understands that the Project Schedule contains certain time-sensitive milestones ("Critical Milestones") that must be attained by certain dates; otherwise, the City will suffer financial harm. Milestones that are Critical Milestones are so indicated in the Project Schedule. Notwithstanding City's ability to assess liquidated damages for Contractor's failure to meet any Critical Milestone, the time period for achieving final Acceptance shall be set forth in the accompanying Purchase Order and Corresponding Documents. In addition to any other remedy provided under this Term Sheet and the Agreement, Contractor's inability to achieve final Acceptance of the System in accordance with the accompanying Purchase Order and Corresponding Documents will be cause for immediate termination of this Term Sheet and the Agreement, and City shall be entitled to a full refund of any amounts paid to Contractor under this Term Sheet and the Agreement for the portion(s) of the Programs that are not accepted.

4.5.2 **Progress Reports.** Contractor will provide City with written status reports advising the City of its progress, which reports will be delivered in accordance with each Task Order issued pursuant to the Purchase Order and Corresponding Documents.

4.5.3 **Project Managers.** Contractor and City shall each designate a "Project Manager", who shall be accessible by telephone throughout the duration of the Agreement and shall be available 9 a.m. to 5 p.m., Monday through Friday, excluding City-designated holidays. These hours may be adjusted by mutual agreement of City and Contractor.

(a) The City's Project Manager will be authorized to make binding decisions for the City regarding this Term Sheet and the Agreement and will: (1) review all specifications, technical materials and other documents submitted by Contractor, request necessary corrections, and approve such documents; (2) provide requested City information and data and assume responsibility on the adequacy of the same; (3) advise Contractor of City's requirements; and (4) upon request, provide access to City's staff, facility, and hardware. City's Project Manager shall have the right to manage and direct any aspect of the project as may be necessary, in his or her opinion, to safeguard the interest of the City. City's Project Manager shall communicate all of his or her concerns to Contractor's Project Manager. In the event Contractor believes that any direction being given by City's Project Manager shall impair the performance of the project or any phase thereof, Contractor shall immediately inform the City's Project Manager of its concern. Except as specifically provided under this Term Sheet and the Agreement, City's Project Manager's management of the project shall not relieve Contractor of any obligations or liabilities set forth in this Term Sheet and the Agreement and the Appendices or Exhibits thereto.

(b) Throughout the term of this Term Sheet and the Agreement, whenever the Contractor's Project Manager is not on site, he or she must be available by phone or e-mail. Whenever the Contractor's Project Manager will be unavoidably absent or otherwise unavailable by phone or e-mail for more than eight hours, then a substitute Project Manager must be designated to respond to telephone calls and e-mails from the City. Contractor shall use its best efforts to maintain the same Project Manager until final Acceptance of the Programs.

4.5.4 **Changing Project Managers.** The City and Contractor shall use their best efforts to maintain the same Project Manager until final Acceptance of the System. However, if a Party needs to replace its Project Manager, the Party shall provide the other Party written notice thereof at least forty-five (45) days prior to the date the Project Manager shall be replaced. Such notice shall provide all the required information above. Notwithstanding the foregoing, the Parties have the right to appoint temporary Project Managers in connection with short term unavailability, sick leave, or reasonable vacations. Parties shall notify each other in advance of any such temporary appointments. City may require Contractor to replace its Project Manager by giving Contractor notification thereof, and City's objective reasons therefor.

4.5.5 **Qualified Personnel/Staffing.** Work under this Term Sheet and the Agreement shall be performed only by competent personnel appropriately trained in technical skills to perform their duties 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. The personnel of each Party, when on the premises of the other, shall comply with the security and other personnel regulations of the Party on whose premises such individual is located.

4.5.6 **Meetings.** From the commencement date of the project until the final Acceptance of the Programs, the Project Managers shall communicate at times and locations designated by City to discuss the progress of the Project. Until the final Acceptance of the project, the Project Managers shall communicate, as required by the City, to discuss any operational problems or defects that City has encountered. City shall have the right to call a meeting at any time by providing Contractor forty-eight (48) hours written notice thereof. Such notice shall provide the time, place, and the purpose of the meeting. Contractor and City's

project team must be available to meet as often as is necessary to facilitate timely completion of the project.

4.5.7 **Inspection.** City's Project Manager shall have the right to inspect and/or test, at any time, all Work, Deliverables and materials to be provided for the project, and the manufacture, assembly, and installation of such Deliverables and materials. City's Project Manager's inspection shall be based on compliance with this Term Sheet and the Agreement. City's Project Manager's right to inspect all aspects of the Project shall not relieve Contractor of its obligation to furnish material and workmanship in accordance with this Term Sheet and the Agreement. City's Project Manager may reject any portion of the Project, which fails to meet any applicable standard.

(a) **Defects Post-Inspection.** Notwithstanding any previous inspection, acceptance, or payment by the City for any Work, or Deliverables found to be in non-compliance with this Term Sheet and the Agreement, or found to be defective before final Acceptance of the project, such Work or Deliverables shall be repaired or replaced within a reasonable period of time by Contractor at its own cost and expense.

(b) **Special Testing Tools.** Contractor shall furnish all tools, labor and material, which Contractor deems necessary to inspect any Deliverables, Work, or material. Unless purchased by the City as part of the project, Contractor shall provide all test equipment needed to verify Deliverables or Work at its sole cost and expense. The equipment provided by Contractor for performance test shall currently be certified as "calibrated" by the test equipment manufacturer, or its authorized calibration service agent. Unless purchased by the City, all test equipment shall remain the property of Contractor.

4.5.8 **Right to Stop Work.** City's Project Manager shall have the right to stop any Work on the project if: (i) City notifies Contractor of a defect in the Work or Deliverables and after such notice, Contractor fails to promptly commence correction of any identified defects in the Work or Deliverables, or (ii) Contractor fails to carry out any portion of the project in accordance with this Term Sheet and the Agreement. All stop work orders from the City shall be in writing and signed by City's Project Manager. City shall specifically state the cause for the order to stop work. Upon receiving a stop work order, Contractor shall immediately cease working on that portion of the Work specified in the order, until the cause for such order has been eliminated. City's right to stop any work on the project shall not give rise to a duty on the part of the City to exercise this right for the benefit of Contractor, or any other person or entity. In the event City's Project Manager orders work to be stopped without proper justification, City shall reimburse Contractor for the actual and direct costs incurred by Contractor due to the delay. Furthermore, Contractor will be entitled to a time extension equal to the number of days of delay that City caused due to the unjustified work stoppage. In no event will a stop work order extend beyond 30 days.

4.5.9 **City Facilities.** If specified in the Purchase Order and Corresponding Documents, City will provide facilities or equipment for Contractor's use during the term of this Term Sheet and the conditions upon which access will be granted.

4.6 **Maintenance Services.** Contractor will provide maintenance services for the Programs in accordance with the terms and conditions of Appendix A of the Agreement, Purchase Order, and Corresponding Documents. Such services, if any, shall commence upon

Acceptance of the Programs by City or, upon expiration of the performance warranty provided herein.

4.6.1 **Infringement Indemnification.** If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the Programs infringes a patent or copyright, or any rights 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 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 Programs 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 that a final injunction shall be obtained against City's use of the Programs by reason of Infringement, or in Contractor's opinion City's use of the Programs 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 Programs as contemplated hereunder, (b) replace the Programs with non-infringing, functionally equivalent substitute Programs, or (c) suitably modify the Programs to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Programs. If none of these options is reasonably available to Contractor, then this Term Sheet and the accompanying Purchase Order may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid under this Term Sheet and the accompanying Purchase Order for the development and license of the infringing Programs.

4.7 **Warranties.**

4.7.1 **Warranty of Title.** Contractor warrants that the Programs developed pursuant to this Term Sheet and the Agreement will, prior to its transfer to City, be the sole and exclusive property of Contractor.

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

4.7.3 **Warranty of Performance Specifications; Warranty Services.** Contractor hereby warrants that when fully implemented, the developed Programs, configuration, customization and services performed by Contractor pursuant to this Term Sheet and the Agreement, when fully implemented, including technical and functional system integration that includes planning, fit/gap analysis, design, configuration, enhancements and custom programming, and developed interfaces (collectively "System Integration and Customization"), will perform in accordance with the required functionality defined in the Appendices of the Agreement, Purchase Order, and Corresponding Documents during a one year period following the issuance of written Acceptance by City. Upon City issuing written notice to Contractor of a warranty breach under this section, Contractor shall correct and repair the configuration and customized code provided by Contractor during the Warranty Period, at no charge to the City, within thirty (30) days following the notice, provided that:

(a) The problem encountered occurs within one year of the acceptance of such provided System Integration and Customization.

(b) The root cause analysis indicates the problem is in the system not meeting the System Integration and Customization requirements where the Contractor has responsibility (e.g., a problem caused by the developed, configured or customized COTS software or hardware component not meeting requirements, a defect in the configuration or code created by the Contractor).

Full correction of the system defect is to be completed by Contractor unless otherwise approved by the City, and the corrected code shall be appropriately tested to verify that no regression errors are introduced. Contractor shall warrant against Version Locking due to customization of the system.

Article 5 Termination and Default

5.1 **Termination for Convenience.**

5.1.1 Within thirty (30) days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the Services or other work.

5.2 **Survival.** This Section and the following Sections of this Term Sheet listed below shall survive termination or expiration of this Term Sheet and the Agreement:

Article 4	Intellectual Property Rights of the Parties

Article 6 Intellectual Property Rights of the Parties

6.1 **License of the Programs.** Upon receipt of final payment for all Services rendered by Contractor under this Term Sheet and the Agreement, Contractor hereby grants to City, in perpetuity, an irrevocable, nonexclusive, right and license to use for internal purposes only a machine-readable copy of the Programs and Documentation in connection with the City's business.

6.2 **Sale of the Programs.** Upon receipt of final payment for the Programs or System, Contractor will convey to City good and marketable title to the Programs or the System free and clear of all liens, claims, and encumbrances.

6.3 **Ownership of Underlying Modules.** The foregoing conveyance of title is subject to Contractor's retention of ownership of all modules developed by Contractor as a utility routine or generalized interface and not specifically for City.

6.4 **City's Data.** Any data or other materials furnished by the City for use by Contractor under this Term Sheet and the Agreement shall remain the sole property of the City and will be held in confidence in accordance with Section 3.7 ("Warranties") of this Term Sheet. Such materials shall be returned to City upon Acceptance of the Programs. Contractor shall within fifteen (15) calendar days purge or physically destroy all City data it acquired from the City from its servers or files and provide City with written certification within five (5) calendar days that such purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

6.5 **Ownership of Modifications and Enhancement.** If City is getting a licensed software, Contractor hereby grants to City an exclusive perpetual license to use for internal purposes only the Programs contained in the modifications and enhancements to the software package licensed hereunder to City.

6.6 **Competition.** Nothing in this Term and Sheet and the Agreement shall be construed so as to preclude Contractor from developing, using, or marketing software that is competitive with that prepared for City hereunder, irrespective of whether such software is similar in functionality or design, or is otherwise related to the Programs developed by Contractor for City pursuant to this Term Sheet and the Agreement.

6.7 **Royalty Payments.** If applicable, Contractor shall pay to City royalty payments as identified in the accompanying Purchase Order and Corresponding Documents.

Article 7 General Provisions

7.1 **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 people with disabilities. Contractor shall provide the services specified in this Term Sheet and the 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 people with disabilities in the provision of services, benefits, or activities provided under this Term Sheet and the 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 Term Sheet. 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).

7.2 **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.

Appendices

A: Maintenance Terms and Conditions

Appendix A

Software Maintenance Terms and Conditions

1. Scope of Service Coverage

a. Contractor shall provide Support Services **and provide Upgrades** during the term of this Maintenance Agreement for the Software.

b. During the term of this Maintenance Agreement, Contractor will furnish Error, Defect or Malfunction correction in accordance with the Priority Categories listed below, based on the City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.

1) Priority 1: An Error, Defect or Malfunction which renders the Software inoperative; or causes the Software to fail catastrophically.

2) Priority 2: An Error, Defect or Malfunction which substantially degrades the performance of the Software, but does not prohibit the City's use of the Software.

3) Priority 3: An Error, Defect or Malfunction which causes only a minor impact on the use of the Software.

c. Contractor will furnish Error, Defect or Malfunction correction in accordance with the following protocols:

1) Priority 1 Protocol: Within two hours, Contractor assigns a product technical specialist(s) to diagnose and correct the Error, Defect or Malfunction; thereafter, Contractor shall provide ongoing communication about the status of the correction; shall proceed to immediately provide a Fix, a Patch or a Workaround; and exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Subsequent Release. Contractor will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect or Malfunction is corrected.

2) Priority 2 Protocol: Within four hours, Contractor assigns a product technical specialist(s) to diagnose the Error, Defect or Malfunction and to commence correction of the Error, Defect or Malfunction; to immediately provide a Workaround; to provide escalation procedures as reasonably determined by Contractor's staff; and to exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Software maintenance release.

3) Priority 3 Protocol: Contractor may include a Fix or Patch in the next Software major release.

2. Hotline Support. Contractor shall provide remote access hotline support to City to help City answer routine questions with respect to the use of the Software. Contractor also shall provide remote access hotline support to City to initiate resolution of Priority 1 and Priority 2 Errors, Defects and Malfunctions. Hotline support shall be made available by phone between the hours of 8 a.m. and 6 p.m. Pacific time Monday through Friday, except legal holidays. Hotline support shall be available by electronic bulletin board, electronic mail or other service twenty-four (24) hours a day, seven (7) days a week. Responses to questions posted by electronic means

will be made within the time frame established under Priority Protocols for an Error, Defect or Malfunction in a Software Product.

3. City Responsibilities Related to Support. City shall use reasonable efforts to make available to Contractor reasonable access to the equipment on which City experienced the Error, Defect or Malfunction, the Software Product and all relevant documentation and records. City shall also provide reasonable assistance to Contractor, including sample output and diagnostic information, in order to assist Contractor in providing Support Services. City shall be responsible for the interface between the Software and other software products installed on City equipment. Unless otherwise agreed in writing between City and Contractor, City is responsible for installing, managing and operating any Software delivered under this Maintenance Agreement.

4. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of the Contractor to replace unsatisfactory work, equipment, or materials although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that did not conform to the requirements of this Maintenance Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

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

City and County of San Francisco Technology Marketplace

Software License and Maintenance Term Sheet

This Software License and Maintenance Term Sheet ("Term Sheet") is attached, and incorporated as though fully set forth therein, to each Purchase Order for Licensed Software and maintenance hereby issued by the City and County of San Francisco ("City") under Contractor's OCA Technology Marketplace Master Agreement to which this Term Sheet is attached ("Agreement"). Capitalized terms used in this Term Sheet that are not otherwise defined have the meanings given them in the Agreement.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Term Sheet:

1.1 "Acceptance" means a notice from the City to Contractor that the Licensed Software meets the specifications contained in the Documentation. City's Acceptance of the Licensed Software shall be governed by the procedures set forth in Section 4.3.

1.2 "Agreement" means the Agreement to which this Term Sheet is attached and incorporated and this Term Sheet, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements, which are specifically incorporated into the Agreement by reference as provided herein.

1.3 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and the requesting department.

1.4 "Contractor" or "Licensor" means the Contractor with whom the City has entered into the Agreement and the entity to whom a Purchase Order is hereby issued for the purchase of one or more perpetual software licenses.

1.5 "Documentation" means the technical publications relating to the use of the Licensed Software, such as reference, installation, administrative, and programmer manuals provided by Contractor to City.

1.6 "Errors, Defects, and Malfunctions" means either a deviation between the function of the Software and the Documentation furnished by Contractor for the Software, or a failure of the Software that degrades the use of the Software.

1.7 "Fix" means repair or replacement of source, object, or executable code in the Software to remedy an Error, Defect, or Malfunction.

1.8 "Licensed Software" or "Software" means one or more of the proprietary computer software programs identified in the Agreement and/or accompanying Purchase Order(s), all related materials, Documentation, all corrections, patches or updates thereto, and other written information received by City from Contractor, whether in machine-readable or

printed form. The Agreement and/or accompanying Purchase Order may identify more than one Software product or more than one copy of any product.

1.9 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.10 "Object Code" means the machine-readable form of the Licensed Software provided by Contractor.

1.11 "Party" or "Parties" means, respectively, the City and Contractor either individually or collectively.

1.12 "Patch" means a temporary repair or replacement of code in the Software to remedy an Error, Defect, or Malfunction. Patches may be made permanent and released in Subsequent Releases of the Software.

1.13 "Priority Category" means a priority assigned to an Error, Defect or Malfunction, designating the urgency of correcting an Error, Defect, or Malfunction. Assignment of a Priority Category to an Error, Defect, or Malfunction is based on City's determination of the severity of the Error, Defect, or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect, or Malfunction.

1.14 "Priority Protocol" means a priority based on the Priority Category; rules specifying the turnaround time for correcting Errors, Malfunctions and Defects; escalation procedures; and personnel assignment.

1.15 "Purchase Order" means the accompanying Purchase Order and any other corresponding documents ("Corresponding Documents") in response to a request for quote by City for the Licensed Software Services described in the Purchase Order. The Purchase Order is issued by City to Contractor pursuant to the Agreement. The Purchase Order and all Corresponding Documents are incorporated into this Term Sheet as though fully set forth herein.

1.16 "Source Code" means the human readable compliable form of the Licensed Software to be provided by Contractor.

1.17 "Specifications" mean the functional and operational characteristics of the Licensed Software as described in Contractor's current published product descriptions and technical manuals.

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

1.19 "Support Services" means the Software support service required under this Term Sheet and the Agreement. Support Services include correcting an Error, Defect, or Malfunction; providing telephone and/or online support concerning the installation and use of the Software; training in the installation and use of the Software; on-site consulting and application development services; detection, warning, and correction of viruses; and disabled/disabling code.

1.20 "Term Sheet" means this document, the accompanying Purchase Order, all attached exhibits, and all applicable City Ordinances and Mandatory City Requirements in the Agreement that are specifically incorporated into this Term Sheet by reference as provided herein.

1.21 "Upgrade" means either an enhancement to the Software code to add new features or functions to the system or software programming revisions containing corrections to Errors, Defects, and Malfunctions that have been reported by users or discovered by the Contractor.

1.22 "Warranty Period" means a period commencing with the installation of the Software product during which reported Errors, Defects, and Malfunctions for Software products are corrected without charge in accordance with the provisions below.

1.23 "Workaround" means a change in the procedures followed or end user operation of the Software to avoid an Error, Defect, or Malfunction without significantly impairing functionality or degrading the use of the Software.

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 City. The words "sufficient," "necessary," or "proper," and the like mean sufficient, necessary, or proper in the judgment of the City, unless otherwise indicated by the context.

Article 2 Term of the Term Sheet

2.1 **License and Maintenance Support Services Term.** The term of this Term Sheet shall reflect the term of the Support Services set forth in the accompanying Purchase Order and Corresponding Documents, unless earlier terminated in accordance with the provisions of this Term Sheet and the Agreement. Subject to Section 4.1 ("Grant of License"), the license granted under this Term Sheet and the Agreement shall commence upon Acceptance of the Licensed Software and shall continue in perpetuity unless sooner terminated in accordance with the provisions of this Term Sheet and the Agreement, or during the term outlined in the Agreement or accompanying Purchase Order, unless sooner terminated in accordance with the provisions of this Term Sheet and the Agreement.

Article 3 Financial Matters

3.1 **Compensation.**

3.1.1 **Charges for Maintenance and Support Services.**

(1) **Limited Term License.** When the license term specified in the Purchase Order and Corresponding Documents is less than perpetual, all charges for maintenance and Support Services are included in the periodic license or rental fee.

(2) **Perpetual License.** Where the license term specified in the Purchase Order and Corresponding Documents is perpetual, all charges for maintenance and Support Services are as stated in the Purchase Order and Corresponding Documents.

(3) **Periodic Payment License.** If the license fee specified in the Purchase Order and Corresponding Documents is payable in periodic payments, there will be no

additional charge for maintenance and Support Services during the period for which such periodic payments are payable or the first year of the term, whichever is longer.

(4) **Lump Sum Payment Licenses.** If the license fee specified in the Purchase Order and Corresponding Documents is payable in one lump sum, there will be no additional charge for the maintenance and Support Services during the first year of the term.

(5) **Annual Maintenance and Support Charges.** Annual maintenance and Support Services charges shall not increase more than the amount stated in the accompanying Purchase Order. Notwithstanding the foregoing, if not stated in the accompanying Purchase Order, then Support Services charges shall not increase more than five percent (5%) of the rate of the year immediately prior to such increase. Contractor will make maintenance and Support Services available to City for the duration stated in the Purchase Order.

Article 4 License

4.1 Grant of License.

4.1.1 **Grant of License.** Subject to the terms and conditions of this Term Sheet and the Agreement, Contractor grants City a non-exclusive and non-transferable license to use the Licensed Software. City acknowledges and agrees that the Licensed Software is the proprietary information of Contractor and that this Term Sheet and the Agreement grants City no title or right of ownership in the Licensed Software.

Contractor agrees that in the event it discontinues its obligations under the terms of this Term Sheet and the Agreement, except as expressly provided for in Article 8 ("Termination and Default") of the Agreement, or ceases to market and/or provide maintenance and Support Services for the Licensed Software, and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, it will provide City, without charge, one (1) copy of the then-current Source Code for all of the programs and all supporting Documentation for the Licensed Software then operating and installed at City's locations. If City should obtain the Source Code and the Documentation pursuant to this section, the only use made of the Source Code and the Documentation will be for the proper maintenance of the Licensed Software in connection with City's use of the Licensed Software as provided for, and limited by, the provisions of this Term Sheet and the Agreement.

Notwithstanding anything to the contrary in the Purchase Order and Corresponding Documents, and upon written request by City in the accompanying Purchase Order, in furtherance of its obligations as stated above, Contractor will provide to City a copy of the Source Code, which corresponds to the most current version of the Licensed Software. Contractor agrees to update, enhance, or otherwise modify such Source Code promptly upon its release of a new version of the Licensed Software to its other licensees such that the Source Code is maintained as corresponding to the newest released version of the Licensed Software. City's right to possession of the Source Code will be governed by the accompanying Purchase Order.

4.1.2 **Restrictions on Use.** City is authorized to use the Licensed Software only for City's municipal purposes.

4.1.3 **Disaster Recovery Copy.** For the purpose of any bona fide City disaster recovery plan or with respect to the use of computer software in its municipal operations, City may make one copy of the Licensed Software for archival purposes and use such archival copy to restore use of the Licensed Software on a site owned or controlled by City. The use of such archival copy shall be limited to (1) the purpose of conducting limited testing of the disaster recovery plan's procedures and effectiveness and (2) during any period subsequent to the occurrence of an actual disaster during which the City cannot operate the Licensed Software on the existing site.

4.1.4 **Transfer of Products.** City may move the Licensed Software and supporting materials to another City site.

4.1.5 **Documentation.** Contractor shall provide City with the Licensed Software specified in this Term Sheet and the Agreement, and a minimum of two copies of the Documentation per installation. Contractor grants to City permission to duplicate all printed Documentation for City's municipal use.

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

4.1.7 **Authorized Modification.** City shall also be permitted to develop, use and modify Application Program Interfaces ("APIs"), macros, and user interfaces. For purposes of this Term Sheet and the Agreement, such development shall be deemed an authorized modification. Contractor shall make no claim under this Term Sheet and the Agreement to ownership of any APIs, macros, or other interfaces developed by or at the direction of the City.

Contractor has no general objection to the City's use of third-party programs in conjunction with the Licensed Software under this Term Sheet and the Agreement. Contractor recognizes that City has and will license third party-programs that City will use with Contractor's products. Based on information provided to Contractor as to the execution of this Term Sheet and the Agreement, Contractor agrees that such use does not constitute an unauthorized modification or violate the licenses granted under this Term Sheet and the Agreement.

4.2 **Delivery.**

4.2.1 **Delivery.** One copy of each of the Licensed Software products in computer readable form shall be shipped to the City not later than thirty (30) days upon issuance of the accompanying Purchase Order. Program storage media (magnetic tapes, disks, and the like) and shipping shall be provided at no charge by Contractor.

4.2.2 **Installation.** If applicable, and upon written request by City in the accompanying Purchase Order, Contractor shall install the programs in accordance with the terms set forth in the accompanying Purchase Order.

4.2.3 **Risk of Loss.** If any of the Licensed Software products are lost or damaged during shipment or before installation is completed, Contractor shall promptly replace such products, including the replacement of program storage media if necessary, at no additional charge to the City. If any of the Licensed Software products are lost or damaged while in the

possession of the City, Contractor will promptly replace such products without charge, except for program storage media, unless supplied by the City.

4.3 **Acceptance Testing.** After Contractor has installed and configured the Licensed Software pursuant to this Term Sheet and the Agreement, the City shall have a period of **thirty (30)** days ("Acceptance Testing Period") from the date of installation to verify that the Licensed Software substantially performs to the specifications contained in the Documentation. In the event that the City determines that the Licensed Software does not meet such specifications, the City shall notify the Contractor in writing, and Contractor shall modify or correct the Licensed Software 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 Licensed Software does not meet the Acceptance criteria of this section, then City shall be entitled to terminate this license in accordance with the procedures specified in Section 8.2 ("Termination for Default; Remedies") of the Agreement, and shall be entitled to a full refund of the license fee.

4.4 **Training.** If applicable, and upon written request by City in the accompanying Purchase Order, Contractor will provide training in accordance with the terms set forth in the accompanying Purchase Order at Contractor's current best government rates.

4.5 **Warranties: Right to Grant License.** Contractor hereby warrants that it has title to and/or the authority to grant a license of the Licensed Software to the City.

4.6 **Warranties: Conformity to Specifications.** Contractor warrants that when the Licensed Software specified in the accompanying Purchase Order and Corresponding Documents and all updates and improvements to the Licensed Software are delivered to City, they will be free from defects as to design, material and workmanship and will perform in accordance with the Contractor's published specifications for the Licensed Software for a period of 365 days from City's Acceptance of such Licensed Software or the manufacturer's warranty period, whichever is longer.

4.7 **Nondisclosure.** City agrees that it shall treat the Licensed Software 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 Licensed Software is Accepted by the City until the license is terminated as provided herein. The obligations of the City set forth above, however, shall not apply to the Licensed Software, or any portion thereof, which:

4.7.1 is now or hereafter becomes publicly known;

4.7.2 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;

4.7.3 is known to the City prior to its receipt of the Licensed Software;

4.7.4 is subsequently developed by the City independently of any disclosures made hereunder by Contractor;

4.7.5 is disclosed with Contractor's prior written consent; and

4.7.6 is disclosed by Contractor to a third party without similar restrictions.

Article 5 Services and Resources

5.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the maintenance and Support Services provided for in this Term Sheet and the Agreement.

Article 6 Software Maintenance

6.1 **Maintenance and Support Services.**

6.1.1 **Maintenance and Support Services.** After Acceptance of the Licensed Software and subject to the terms, conditions, and charges set forth in this Section 4.1.1, Contractor will provide City with maintenance and Support Services for the Licensed Software as follows: (i) Contractor will provide such assistance as necessary to cause the Licensed Software to perform in accordance with the Specifications as set forth in the Documentation; (ii) Contractor will provide, for City's use, whatever improvements, enhancements, Upgrades, extensions, and other changes to the Licensed Software Contractor may develop; and (iii) Contractor will update the Licensed Software, as required, to cause it to operate under new versions or releases of the operating system specified in this Term Sheet and the Agreement so long as such updates, or Upgrades are made generally available to Contractor's other licensees.

6.1.2 **Changes in Operating System.** If City desires to obtain a version of the Licensed Software that operates under an operating system not specified in this Term Sheet and the Agreement, Contractor will provide City with the appropriate version of the Licensed Software, if available, on a ninety (90) day trial basis without additional charge, provided City has paid all maintenance and support charges then due. At the end of the ninety (90) day trial period, City must elect one of the following three options: (i) City may retain and continue the old version of the Licensed Software, return the new version to Contractor, and continue to pay the applicable rental or license fee and maintenance charges for the old version; (ii) City may retain and use the new version of the Licensed Software and return the old version to Contractor, provided City pays Contractor the applicable rental or license fee and maintenance charges for the new version of the Licensed Software; or (iii) City may retain and use both versions of the products, provided City pays Contractor the applicable rental or license fee and maintenance charges for both versions of the Licensed Software. City will promptly issue the necessary document(s) to accomplish the above.

6.2 During the term of this Term Sheet and the Agreement, Contractor will furnish Error, Defect or Malfunction correction in accordance with the Priority Categories listed below, based on the City's determination of the severity of the Error, Defect, or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect, or Malfunction.

6.2.1 **Priority 1:** An Error, Defect, or Malfunction that renders the Software inoperative, or causes the Software to fail catastrophically.

6.2.2 **Priority 2:** An Error, Defect, or Malfunction that substantially degrades the performance of the Software, but does not prohibit the City's use of the Software.

6.2.3 **Priority 3:** An Error, Defect, or Malfunction that causes only a minor impact on the use of the Software.

6.3 Contractor will furnish Error, Defect, or Malfunction correction in accordance with the following protocols:

6.3.1 **Priority 1 Protocol:** Within two hours, Contractor assigns a product technical specialist(s) to diagnose and correct the Error, Defect, or Malfunction; thereafter, Contractor shall provide ongoing communication about the status of the correction; shall proceed to immediately provide a Fix, a Patch, or a Workaround; and exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect, or Malfunction in the next Subsequent Release. Contractor will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect, or Malfunction is corrected.

6.3.2 **Priority 2 Protocol:** Within four hours, Contractor assigns a product technical specialist(s) to diagnose the Error, Defect, or Malfunction and to commence correction of the Error, Defect, or Malfunction; to immediately provide a Workaround; to provide escalation procedures as reasonably determined by Contractor's staff; and to exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect, or Malfunction in the next Software maintenance release.

6.3.3 **Priority 3 Protocol:** Contractor may include a Fix or Patch in the next Software major release.

6.3.4 **Hotline Support.** Contractor shall provide remote access hotline support to City to help City answer routine questions with respect to the use of the Software. Contractor also shall provide remote access hotline support to City to initiate resolution of Priority 1 and Priority 2 Errors, Defects, and Malfunctions. Hotline support shall be made available by phone between the hours of 8 a.m. and 6 p.m. Pacific time Monday through Friday, except legal holidays. Hotline support shall be available by electronic bulletin board, electronic mail, or other service 24-hours a day, seven-days a week. Responses to questions posted by electronic means will be made within the time frame established under Priority Protocols for an Error, Defect, or Malfunction in a Software Product.

Article 7 Indemnity

7.1 **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 Software 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 Software 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 Software by reason of Infringement, or in Contractor's opinion City's use of the Licensed Software 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 Software as contemplated hereunder, (b) replace

the Licensed Software with a non-infringing, functionally equivalent substitute Licensed Software, or (c) suitably modify the Licensed Software to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Licensed Software. If none of these options is reasonably available to Contractor, then the Agreement may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid under this Term Sheet and the accompanying Purchase Order for the license of such infringing Licensed Software. Any unauthorized modification or attempted modification of the Licensed Software by City or any failure by City to implement any improvements or updates to the Licensed Software, 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 Software with products or data of the type for which the Licensed Software was neither designed nor intended to be used.

Article 8 Survival

8.1 **Disposition of Licensed Software on Termination.** Upon termination of this Term Sheet for any reason other than as provided for in Section 4.1 ("Grant of License"), if the term of the Software License City has paid for is other than perpetual, City shall immediately: (i) return the Licensed Software to Contractor together with all Documentation; (ii) purge all copies of the Licensed Software or any portion thereof from all CPUs and from any computer storage medium or device on which City has placed or permitted others to place the Licensed Software; and (iii) give Contractor written certification that through its best efforts and to the best of its knowledge, City has complied with all of its obligations under this Section 8.1.

8.2 **Rights and Duties upon Termination or Expiration.** This Section and the following Sections of this Term Sheet listed below, shall survive termination or expiration of this Term Sheet and the Agreement:

4.1	Grant of License

City and County of San Francisco Technology Marketplace

Software as a Service Term Sheet

This Software as a Service ("SaaS") Term Sheet ("Term Sheet") is attached, and incorporated as though fully set forth therein, to each Purchase Order for SaaS and Services issued under the OCA Technology Marketplace Master Agreement ("Agreement"). Capitalized terms used in this Term Sheet that are not otherwise defined have the meanings given them in the Agreement.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Term Sheet:

1.1 "Acceptance" means notice from the City to Contractor that the SaaS Application meets the specifications and requirements contained in the Documentation and Agreement. City's Acceptance shall be governed by the procedures set forth in Section 4.3.

1.2 "Acceptance Period" means 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 without failure.

1.3 "Agreement" means the Agreement to which this Term Sheet is attached and incorporated and this Term Sheet, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements, which are specifically incorporated into this Term Sheet by reference as provided herein.

1.4 "Authorized Users" means a person authorized by City to access the City's Portal and use the SaaS Application, including any City employee, contractor or agent, or any other individual or entity authorized by City.

1.5 "Back-Up Environment" means Contractor's back-up Data Center for the SaaS Services.

1.6 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and the requesting department.

1.7 "City Data" or "the City Data" means that data as described in Article 7 of this Term Sheet which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Term Sheet, including data resulting from use of the SaaS Service. City Data includes, without limitation, Confidential Information.

1.8 "City Portal" means an electronic gateway to a secure entry point via Contractor's Website 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.

1.9 "City's Project Manager" means the individual specified by the City pursuant to Section 4.2.1 hereof, as the Project Manager authorized to administer this Term Sheet on the City's behalf.

1.10 "CMD" means the Contract Monitoring Division of the City.

1.11 "Confidential Information" means confidential City information including, but not limited to, Personal Identifiable Information ("PII"), protected health information ("PHI"), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state, or federal laws restricting the use and disclosure of such information. These laws include, but are not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act/California Consumer Privacy Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M. Confidential Information includes, without limitation, City Data.

1.12 "Contractor" shall mean the Contractor with whom the City has entered into the Agreement and the entity to whom a Purchase Order is hereby issued for the purchase of SaaS and Services.

1.13 "Contractor Project Manager" means the individual specified by Contractor pursuant to Section 4.2.1 hereof, as the Project Manager authorized to administer this Term Sheet and the Agreement on Contractor's behalf.

1.14 "Contractor's Website" means the Website that provides Authorized User access to the SaaS Application Services.

1.15 "Data Breach" means any access, destruction, loss, theft, use, modification, or disclosure of City Data by an unauthorized party or that is in violation of this Term Sheet and the Agreement terms and/or applicable local, state, or federal law.

1.16 "Data Center(s)" means a physical location within the United States where Contractor (or its subcontractor) houses and operates the hardware (including computer servers, routers, and other related equipment) on which Contractor hosts on the Internet the SaaS Application and City Data pursuant to this Term Sheet and the Agreement.

1.17 "Deliverables" means Contractor's work product resulting from the Services provided by Contractor to City during the course of Contractor's performance of this Term Sheet and the Agreement, including without limitation, the work product described in the Purchase Order and Corresponding Documents.

1.18 "Deliverable Data" means Project Data that is identified in Appendix A to this Term Sheet, the Agreement, and/or accompanying Purchase Orders, and required to be delivered to the City.

1.19 "Disabling Code" means computer instructions or programs, subroutines, code, instructions, data, or functions (including but not limited to viruses, worms, and 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 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.

1.20 "Documentation" means technical publications provided by Contractor to City relating to use of the SaaS Application, such as reference, administrative, maintenance, and programmer manuals.

1.21 "End Users" means any Authorized User who accesses Contractor's Website and uses the SaaS Application and Services.

1.22 "Internet" means that certain global network of computers and devices commonly referred to as the "internet," including, without limitation, the World Wide Web.

1.23 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws, which impose specific duties and obligations upon Contractor.

1.24 "Open Source Software" means software with either freely obtainable source code, a license for modification, or permission for free distribution.

1.25 "Party" or "Parties" means, respectively, the City and Contractor either individually or collectively.

1.26 "Performance Credit" means credit due to City by Contractor with regard to Contractor's service level obligations in appendices to this Term Sheet, the Agreement, and/or accompanying Purchase Orders.

1.27 "Personal Identifiable Information (PII)" means any information about an individual, including information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that can reasonably be linked to an individual, such as medical, educational, financial, and employment information.

1.28 "Precedence" means that, notwithstanding the terms of any other document executed by the Parties as a part of this Term Sheet and the Agreement, the terms of this Term Sheet and the Agreement shall control over any discrepancy, inconsistency, gap, ambiguity, or conflicting terms set forth in any other Contractor pre-printed document.

1.29 "Project Data" means data that is first produced in the performance of this Term Sheet and the Agreement.

1.30 "Purchase Order" means the accompanying Purchase Order and any other corresponding documents ("Corresponding Documents") in response to a request for quote by City for the SaaS Services described in the Purchase Order. The Purchase Order is issued by City to Contractor pursuant to this Term Sheet and the Agreement. The Purchase Order and all Corresponding Documents are incorporated into this Term Sheet as though fully set forth herein.

1.31 "SaaS Application/SaaS Software/Software" means the licensed and hosted computer program and associated documentation, as listed in this Term Sheet and the Agreement

and/or accompanying Purchase Orders, and any modification, Upgrades or modifications to the program(s), residing in Contractor's servers that provides the SaaS Services that may be accessed by Authorized Users through the Internet. The SaaS Application may include Contractor provided Third-Party Software. All Software, revisions, and versions provided by Contractor shall be subject to the terms and conditions of this Term Sheet and the Agreement, including any amendments thereto.

1.32 "SaaS Application Patch" means an update to the SaaS Application comprised of code inserted (or patched) into the code of the SaaS Application, and which may be installed as a temporary fix between full releases of a SaaS Software Revision or SaaS Software Version. Such a patch may address a variety of issues including, without limitation, fixing a Software bug, installing new drivers, addressing new security vulnerabilities, addressing software stability issues, and upgrading the Software. SaaS Application Patches are included in the annual payments made by City to Contractor for the SaaS Services under this Term Sheet and the Agreement.

1.33 "SaaS Implementation and Training Services" means the services by which Contractor will implement all necessary Software configurations and modules necessary to make the SaaS Application available and accessible to City.

1.34 "SaaS Issue" means a problem with the SaaS Services identified by the City that requires a response by Contractor to resolve.

1.35 "SaaS Maintenance Services" means the 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.

1.36 "SaaS Services" means the Services performed by Contractor to host the SaaS Application to provide the functionality listed in the Documentation.

1.37 "SaaS Severity Level" means 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 Contractor. Until the SaaS Issue has been resolved, the Severity Level may be raised or lowered based on Contractor's analysis of impact to business.

1.38 "SaaS Software Error" means any failure of SaaS Software to conform in all material respects to the requirements of this Term Sheet and the Agreement or Contractor's published specifications.

1.39 "SaaS Software Error Correction" means 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.

1.40 "SaaS Software Revision" means an update to the current SaaS Software Version of the SaaS Software code that 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.

1.41 "SaaS Software Version" means 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 4 refers to a fix. All SaaS Software Versions are provided and included as part of this Term Sheet and the Agreement upon request or approval from City for the upgrade.

1.42 "Scheduled SaaS Maintenance" means the time (in minutes) during the month, as measured by Contractor, 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.

1.43 "Services" means the work performed by Contractor pursuant to accompanying Purchase Orders, Corresponding Documents, this Term Sheet, and the Agreement including all services, labor, supervision, materials, equipment, actions, and other requirements to be performed and furnished by Contractor under this Term Sheet and the Agreement.

1.44 "Successor Service Provider" means a new service provider, if any, selected by City in the event the SaaS Services are terminated under this Term Sheet and the Agreement.

1.45 "Term Sheet" means this document, the accompanying Purchase Order, all attached exhibits, and all applicable City Ordinances and Mandatory City Requirements in the Agreement between City and Contractor that are specifically incorporated into this Term Sheet by reference as provided herein.

1.46 "Third-Party Software" means the software described in the Agreement and/or accompanying Purchase Orders.

1.47 "Transition Services" means that assistance reasonably requested by City to affect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider.

Article 2 Term of the Term Sheet

2.1 **Term.** The term of this Term Sheet shall reflect the term of the SaaS Services set forth in the accompanying Purchase Order and Corresponding Documents, unless earlier terminated in accordance with the provisions of this Term Sheet or the Agreement.

Article 3 Financial Matters

3.1 **Calculation of Charges.** Contractor shall provide an invoice to City on a monthly basis for Goods delivered and/or Services completed in the immediately preceding month, unless a different schedule is set out in the accompanying Purchase Order and Corresponding Documents.

3.1.1 **SaaS Implementation and Training Services.** The breakdown of costs associated with the SaaS Implementation and Training Services appear in the accompanying Purchase Order and Corresponding Documents. In no event shall the amount for SaaS Implementation and Training Services under this Agreement exceed the amount stated in the accompanying Purchase Order**.**

3.1.2 **SaaS Application and Hosted Services.** The breakdown of costs associated with the SaaS Application and Hosted Services appear in the accompanying Purchase Order and Corresponding Documents. In no event shall the amount for SaaS Application and Hosted Services under this Term Sheet and the Agreement exceed the amount stated in the Purchase Order. If there is an increase in annual SaaS Application and Hosted Services charges, Contractor shall give City written notice of such increase at least thirty (30) days prior to the expiration of the applicable SaaS Application and Hosted Services period. If not stated in the accompanying Purchase Order, annual SaaS Application and Hosted Services charges shall not increase more than five percent (5%) of the rate of the year immediately prior to such increase.

Article 4 SaaS Services and Resources

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

4.1.1 **Click-Wrap Disclaimer.** No "click to accept" agreement that may be required for the City and/or Authorized Users' access to the SaaS Services or Contractor's Website and no "terms of use" or "privacy policy" referenced therein or conditioned for use of the SaaS Services or Contractor's Website shall apply. Only the provisions of this Term Sheet and the Agreement as amended from time to time shall apply to City and/or Authorized Users for access thereto and use thereof. The Parties acknowledge that City and/or each Authorized User may be required to click "Accept" as a condition of access to the SaaS Services through Contractor's Website, but the provisions of such "click to accept" agreement and other terms (including Terms of Use and Privacy Policy) referenced therein shall be null and void for City and/or each such Authorized User. The foregoing does not apply to the City's own click-wrap agreements in the event the City chooses to have Contractor include terms of use, terms of service, privacy policies, or similar requirements drafted and approved by the City.

4.1.2 **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 Term Sheet and the Agreement.

4.1.3 **Authorized APIs.** City shall be permitted to access and use Contractor's SaaS Application Program Interfaces (APIs) 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 Term Sheet and the Agreement, such development shall be deemed an authorized modification but will not be supported by Contractor unless provided for in this Term Sheet and the Agreement. 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.

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

4.2 **Project Managers; Services Contractor Agrees to Perform.**

4.2.1 **Project Managers.** Contractor and City shall each designate a Project Manager, who shall be accessible by telephone throughout the duration of this Term Sheet and the Agreement and shall be available 9 a.m. to 5 p.m. (Pacific Standard Time), Monday through Friday, excluding City-designated holidays. These hours may be adjusted by mutual agreement of City and Contractor. Contractor shall use its best efforts to maintain the same Project Manager throughout the duration of this Term Sheet and the Agreement. However, if Contractor needs to replace its Project Manager, Contractor shall provide City with written notice thereof at least forty-five (45) days prior to the date the Project Manager shall be replaced. Notwithstanding the foregoing, Contractor will have the right to appoint temporary Project Managers in connection with short term unavailability, sick leave or reasonable vacations. Contractor shall notify City in advance of any such temporary appointments. City may require Contractor to replace its Project Manager, by giving Contractor notification thereof and City's objective reasons therefor.

4.2.2 **Services Contractor Agrees to Perform.** During the Term of this Term Sheet and the Agreement, Contractor will perform all of the Services set forth in this Term Sheet, the Agreement and/or accompanying Purchase Orders and the following:

(a) Provide telephone support for Authorized Users in the operation of the SaaS Application and Services.

(b) **Maintenance and Support.** Contractor shall provide Maintenance/Support in accordance with this Term Sheet, the Agreement, and/or accompanying Purchase Orders. Maintenance and Support Services include the provision of upgrades and a service desk, during the term of this Term Sheet and the Agreement for the SaaS Application(s).

(c) **Hosting.** Contractor shall provide hosting in accordance with Appendix A of this Term Sheet, including the following:

(i) **Hosting Infrastructure.** Contractor shall provide all hosting infrastructure, including, but not limited to, hardware, software and other equipment, at Contractor's hosting site as required to provide hosting and deliver the SaaS Application and Services.

(ii) **Security.** Contractor shall ensure that all electronic transmission or exchange of City Data will be encrypted using current industry standards. Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes stated in this Term Sheet and the Agreement. City Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of Contractor not involved in administration of this Term Sheet and the Agreement, unless otherwise permitted in this Term Sheet and the Agreement. Remote access to view City data by Contractor for development and technical support purposes from outside the United States is allowed as long as City Data remains hosted solely on systems residing in the continental United States.

(iii) **Access.** Contractor shall provide Authorized Users 24/7 access to the SaaS Application(s).

(iv) **Disaster Recovery and Business Continuity.** Contractor shall provide Disaster Recovery Services and assist with Business Continuity as described in Section 8.4 and Appendix C of this Term Sheet.

(d) **Service Level Obligations.** Contractor shall comply with the support (24/7 service desk) and Service Level Obligations described in Appendix D of this Term Sheet.

4.3 **Acceptance Testing; Document Delivery; Training.**

4.3.1 After City has obtained access to the SaaS Application and Services, and subsequent to each SaaS Software Version upgrade, revision and patch, City and Contractor shall conduct user Acceptance testing as outlined in this Term Sheet, the Agreement and accompanying Purchase Orders to verify that the SaaS Application and Services substantially conform to the specifications and City's requirements contained therein. In the event that the City determines that the SaaS Services do not meet such specifications, the City shall notify 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 this Term Sheet, the Agreement and accompanying Purchase Orders, then City shall be entitled to terminate the Purchase Order(s) in accordance with the procedures specified in the Agreement, and shall be entitled to a full refund of any fees paid as part of this Term Sheet and the Agreement prior to termination.

4.3.2 **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 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. The City may withhold its issuance of the notice of final Acceptance until City receives the completed Documentation.

4.3.3 **Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good, and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Term Sheet.

4.3.4 **Subcontracting.** Notwithstanding Section 4.5.2 of the Agreement, all Subcontracts must incorporate the terms of Article 7 "Data and Security" of this Term Sheet, unless inapplicable.

Article 5 Indemnity and Warranties

5.1 **Infringement Indemnification.** If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the 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, only if Contractor accepts the defense and hold harmless requirements without reservation, and provided, however, that Contractor shall not agree to any injunctive relief or settlement that obligates the City to perform any obligation, make an admission of guilt, fault or culpability, or incur any expense, without City's prior written consent, which shall not be unreasonably withheld or delayed. 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 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, only if Contractor accepts the defense and hold harmless requirements without reservation, and provided, however, that Contractor shall not agree to any injunctive relief or settlement that obligates the City to perform any obligation, make an admission of guilt, fault or culpability, or incur any expense, without City's prior written consent, which shall not be unreasonably withheld or delayed. In the event a final injunction is obtained against City's use of the SaaS Application and Services by reason of Infringement, or in Contractor's opinion City's use of the 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 SaaS Application and Services as contemplated hereunder, (b) replace the SaaS Application and Services with a non-infringing, functionally equivalent substitute SaaS Application and Services, or (c) suitably modify the SaaS Application and Services to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the SaaS Application and Services. If none of these options is reasonably available to Contractor, then this Term Sheet and accompanying Purchase Order may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid under this Term Sheet and accompanying Purchase Order for the license of such infringing SaaS Application and/or Services. Any unauthorized modification or attempted modification of the SaaS Application and Services by City or any failure by City to implement any improvements or updates to the 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 SaaS Application and Services with products or data of the type for which the SaaS Application and Services was neither designed nor intended to be used, unless City has obtained prior written authorization from Contractor permitting such use.

5.2 **Warranties of Contractor.**

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

5.2.2 **Warranty of Performance.** Contractor warrants that when fully implemented, the SaaS Application to be configured and provided under this Term Sheet and the Agreement shall perform in accordance with the specifications applicable thereto. With respect to all Services to be performed by Contractor under this Term Sheet and the Agreement, 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 Term Sheet and the Agreement within twelve (12) months from the date of provision of such services, Contractor shall, at its sole cost and expense, re-perform such services.

5.2.3 **Compliance with Description of Services.** Contractor represents and warrants that the SaaS Application and Services specified in this Term Sheet and the 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.

5.2.4 **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.

5.2.5 **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.

5.2.6 **Warranty of Suitability for Intended Purpose.** Contractor warrants that the SaaS Application and Services will be suitable for the intended purpose of this Term Sheet and the Agreement.

Article 6 Termination; Disposition of Content; Survival

6.1 **Termination for Cause and/or Convenience.** City shall have the right, without further obligation or liability to Contractor:

6.1.1 To immediately terminate this Term Sheet and the accompanying Purchase Order if Contractor commits any breach of this Term Sheet and the accompanying Purchase Order or default (see Section 8.2 of the Agreement) and fails to remedy such breach or default within ten (10) days after written notice by City of such breach ("ten (10) day cure period"), in which event, Contractor shall refund to City all amounts paid under this Term Sheet and the accompanying Purchase Order for the SaaS Application and/or Services in the same manner as if City ceased to use the SaaS Application due to infringement under Section 5.1 of this Term Sheet. At City's sole election, the ten (10) day cure period will ***not*** apply to termination for data breach and/or breach of confidentiality; or

6.1.2 To terminate this Term Sheet and the accompanying Purchase Order 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 Term Sheet and the accompanying Purchase Order.

6.2 **Bankruptcy.** In the event that Contractor 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 City's option this Term Sheet and the Agreement shall terminate and be of no further force and effect. Upon termination of this Term Sheet and the accompanying Purchase Order 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) calendar days clear, purge, or physically destroy all City Data from its hosted servers or files, and provide City with written certification within five (5) calendar days that such clear, purge, and/or physical destruction has occurred. Secure disposal shall be accomplished by "clearing," "purging," or "physical destruction" in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

6.3 **Transition Services and Disposition of City Data.** Notwithstanding anything to the contrary set forth in the accompanying Purchase Order and Corresponding Documents, upon expiration or termination of the SaaS Services under this Term Sheet:

6.3.1 Contractor may immediately discontinue the SaaS Services and City shall immediately cease accessing the SaaS Application and Services. Contractor shall within five (5) calendar days of the expiration or termination of the SaaS Services return City's data in an agreed-upon machine readable format. This provision shall also apply to all City Data that is in the possession of subcontractors, agents, or auditors of Contractor. Such data transfer shall be done at no cost to the City. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within thirty (30) calendar days clear, purge, or physically destroy all City Data from its hosted servers or files, and provide City with written certification within five (5) calendar days that such clear or purge, and/or physical destruction has occurred. Secure disposal shall be accomplished by "clearing," "purging", or "physical destruction" in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

6.3.2 Contractor shall provide to City and/or Successor Service Provider assistance requested by City to affect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider. During the transition period, SaaS and City Data access shall continue to be made available to City without alteration. 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 Term Sheet, 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 Term Sheet shall apply to the Transition Services. This Section 6.3.2 shall survive the termination of this Term Sheet.

6.4 **Survival.** This Section and the following Sections of this Term Sheet listed below, shall survive termination or expiration of this Term Sheet and the Agreement:

6.5	Data Rights

6.5 **Data Rights.**

6.5.1 Preexisting Data of each Party that will be included as a Deliverable under this Term Sheet and the Agreement will be identified in the Purchase Order and Corresponding Documents. Preexisting Data of the City may only be used by Contractor for purposes of the scope of work of this Term Sheet, unless such data is otherwise publicly available.

6.5.2 The City shall have the unrestricted right to use the Deliverable Data and delivered Project Data, including all Preexisting Data provided as a Deliverable under this Term Sheet and the Agreement.

Article 7 Data and Security

7.1 **City Data.**

7.1.1 **Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City. Contractor warrants that the SaaS Application does not maintain, store, or export the City Data using a database structure, data model, entity relationship diagram, or equivalent.

7.1.2 **Use of City Data.** Contractor agrees to hold City Data received from, or created or collected on behalf of, the City in strictest confidence. Contractor shall not use or disclose City's Data except as permitted or required by this Term Sheet, the Agreement, or as otherwise authorized in writing by the City. Any work using or sharing, or storage of City's Data outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, including user tracking and exception City Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors, or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

7.1.3 **Access to and Extraction of City Data.** City shall have access to City Data twenty-four (24) hours a day, seven (7) days a week. The SaaS Application shall be capable of creating a digital, reusable copy of the City Data, in whole and in parts, as a platform independent and machine-readable file. Such file formats include, without limitation, plain text files such as comma-delimited tables, extensible markup language, and javascript object notation. City Data that is stored in binary formats, including without limitation portable document format, JPEG, and portable network graphics files, shall instead be reproducible in the same format in which it was loaded into the SaaS Application. This reusable copy must be made available in a publicly documented and non-proprietary format, with a clearly-defined data structure and a data dictionary for all terms of art contained in the data. For purposes of this section, non-proprietary formats include formats for which royalty-free codecs are available to End Users. Contractor warrants that City shall be able to extract City Data from the SaaS Application on demand, but no later than twenty-four (24) hours of City's request, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees to Contractor).

7.1.4 **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 of data corruption or interruption of the SaaS Services. Unless otherwise described in this Term Sheet, the Agreement and/or accompanying Purchase Orders, Contractor shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Term Sheet and the Agreement and as outlined in this Term Sheet, the Agreement, and/or accompanying Purchase Orders 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.

7.1.5 **Data Breach; Loss of City Data.** Notwithstanding anything to the contrary set forth in the Agreement and accompanying Purchase Orders, in the event of any Data Breach, act, SaaS Software 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:

(a) Notify City immediately following discovery, but no later than twenty-four (24) hours, of becoming aware of such occurrence or suspected occurrence. Contractor's report shall identify:

(i) the nature of the unauthorized access, use, or disclosure;

(ii) the Confidential Information accessed, used, or disclosed;

(iii) the person(s) who accessed, used, disclosed, and/or received protected information (if known);

(iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized access, use, or disclosure; and

(v) what corrective action Contractor has taken or will take to prevent future unauthorized access, use, or disclosure.

(b) In the event of a suspected Breach, Contractor shall keep the City informed regularly of the progress of its investigation until the uncertainty is resolved;

(c) Contractor shall coordinate with the City in its breach response activities including without limitation:

(i) Immediately preserve any potential forensic evidence relating to the breach, and remedy the breach as quickly as circumstances permit;

(ii) Promptly (within two (2) business days) designate a contact person to whom the City will direct inquiries, and who will communicate Contractor responses to City inquiries;

(iii) As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by the City, and undertake appropriate response activities;

(iv) Provide status reports to the City on Data Breach response activities, either on a daily basis or a frequency approved by the City;

(v) Make all reasonable efforts to assist and cooperate with the City in its Breach response efforts;

(vi) Ensure that knowledgeable Contractor staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach; and

(vii) 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.

(d) In the case of personal identifiable information (PII) or protected health information (PHI), at City's sole election, (a) notify the affected individuals 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;

(e) 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 twenty-four (24) months following the date of notification to such individuals;

(f) Perform or take any other actions required to comply with applicable law as a result of the occurrence;

(g) Recreate lost City Data in the manner and on the schedule set by City without charge to City; and

(h) 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.

(i) Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain (at the City's election) information that may include: name and contact information of Contractor's (or City'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 Contractor.

(j) Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

(k) City shall conduct all media communications related to such Data Breach, unless in its sole discretion, City directs Contractor to do so.

7.2 **Proprietary or Confidential Information.**

7.2.1 **Proprietary or Confidential Information of City.** Contractor understands and agrees that, in the performance of the work or Services under this Term Sheet and the Agreement may involve access to City Data that is Confidential Information. Contractor and any subcontractors or agents shall use Confidential Information only in accordance with all applicable local, state and federal laws restricting the access, use, and disclosure of Confidential Information and only as necessary in the performance of this Term Sheet and the Agreement. Contractor's failure to comply with any requirements of local, state, or federal laws restricting access, use, and disclosure of Confidential Information shall be deemed a material breach of this Term Sheet and the Agreement, for which City may terminate this Term Sheet and the Agreement. In addition to termination or any other remedies set forth in this Term Sheet and the Agreement or available in equity or law, the City may bring a false claim action against Contractor pursuant to Chapters 6 or 21 of the Administrative Code, or debar Contractor. Contractor agrees to include all of the terms and conditions regarding Confidential Information contained in this Term Sheet and the Agreement in all subcontractor or agency contracts providing Services under this Term Sheet and the Agreement.

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

7.2.3 **Nondisclosure.** Contractor agrees and acknowledges that it shall have no proprietary interest in any proprietary or Confidential Information and will not disclose, communicate or 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 Term Sheet and the 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. Contractor shall take all necessary steps to ensure that the Confidential Information is securely maintained. Contractor's obligations set forth herein shall survive the termination or expiration of this Term Sheet and the Agreement. In the event Contractor becomes legally compelled to disclose any of the Confidential Information, it shall provide the City with prompt notice thereof and shall not divulge any information until the City 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 that it is legally required to disclose.

7.2.4 **Litigation Holds.** Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

7.2.5 **Cooperation to Prevent Disclosure of Confidential Information.** Contractor shall use its best efforts to assist the City in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, Contractor shall advise the City immediately in the event Contractor 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 Term Sheet and the Agreement, and Contractor will cooperate with the City in seeking injunctive or other equitable relief against any such person.

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

7.2.7 **Surrender of Confidential Information upon Termination.** Upon termination of this Term Sheet and/or the Agreement, including but not limited to expiration of the term, early termination or termination for convenience, Contractor shall, within five (5) calendar days from the date of termination, return to City any and all Confidential Information received from the City, or created or received by Contractor on behalf of the City, which are in Contractor's possession, custody, or control. The return of Confidential Information to City shall follow the timeframe and procedure described further in this Term Sheet (Article 5).

7.2.8 **Data Security.** To prevent unauthorized access of City Data,

(a) Contractor shall at all times during the term of this Term Sheet and the Agreement provide and maintain up-to-date security with respect to (i) the Services,

(ii) Contractor's Website, (iii) Contractor's physical facilities, (iv) Contractor's infrastructure, and (v) Contractor's networks.

(b) Contractor shall provide security for its networks and all Internet connections consistent with industry best practices, and will promptly install all patches, fixes, upgrades, updates, and new versions of any security software it employs.

(c) Contractor will maintain appropriate safeguards to restrict access to City's Data 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.

(d) For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., most current industry standard encryption for transport and storage, such as the National Institute of Standards and Technology's Internal Report 7977 or Federal Information Processing Standards [FIPS] 140-2 [Security Requirements for Cryptographic Modules] or FIPS-197 or successors, intrusion prevention/detection or similar barriers) and secure authentication (e.g., password protected) access to the City's Confidential Information and hosted City Data.

(e) For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of City Data.

(f) City Data shall be encrypted at rest and in transit with controlled access.

(g) Contractor will establish and maintain any additional physical, electronic, administrative, technical, and procedural controls and safeguards to protect City Data that are no less rigorous than accepted industry practices (including, as periodically amended or updated, the International Organization for Standardization's standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management, NIST Special Publication 800-53 Revision 4 or its successor, NIST Special Publication 800-18 or its successor, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards or other applicable industry standards for information security), and shall ensure that all such controls and safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Term Sheet and the Agreement.

(h) Contractor warrants to the City compliance, in performing its obligations hereunder, with the following (as periodically amended or updated) as applicable:

(i) The California Information Practices Act/California Consumer Privacy Act (Civil Code §§ 1798 et seq);

(ii) The European General Data Protection Regulation ("GDPR");

(iii) Relevant security provisions of the Internal Revenue Service (IRS) Publication 1075, including the requirements that Data not traverse networks located outside of the United States;

(iv) Relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCI DSS), including the PCI DSS Cloud Computing Guidelines;

(v) Relevant security provisions of the Social Security Administration (SSA) Document Electronic Information Exchange Security Requirement and Procedures for State and Local Agencies Exchanging Electronic Information with the Social Security Administration;

(vi) Relevant security provisions of the Criminal Justice Services (CJIS) Security policy;

(vii) Relevant security provisions of the Medi-Cal Privacy and Security Agreement between the California Department of Health Care Services and the County of San Francisco.

7.2.9 **Data Privacy and Information Security Program.** Without limiting Contractor's obligation of confidentiality as further described herein, Contractor shall establish and maintain 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 of Contractor's employees, agents, and subcontractors, if any, comply with all of the foregoing.

7.2.10 **City's Right to Termination for Deficiencies.** City reserves the right, at its sole election, to immediately terminate this Term Sheet and the Agreement, without limitation and without liability, if City reasonably determines that Contractor fails or has failed to meet its obligations under this Article 7.

7.2.11 **Data Transmission.** 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 encrypted secure means (e.g. HTTPS, SFTP, or most current industry standard established by NIST). Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in this Term Sheet and the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor shall ensure that no City Data of any kind shall be copied, modified, destroyed, deleted, 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. Contractor is prohibited from accessing City Data from outside the continental United States.

7.3 **American Institute of Certified Public Accounts (AICPA) Audit Reports.**

7.3.1 Contractor shall provide to City, on an annual basis, an SSAE 18, SOC 2, Type 2 Report, and an SSAE 18, SOC 1, Type 2 Audit Report, to be conducted by an independent third party ("Audit Reports") (if Contractor is using a hosting service provider, Contractor shall provide such Audit Reports it receives from its service provider or providers) as follows: (a) the Audit Reports shall include a 365 day (12-month) testing period; and (b) the Audit Reports shall be available to City no later than thirty (30) days after they are received by

Contractor. If Contractor receives a so-called "negative assurance opinion," or the annual Audit Report finds a material data privacy or information security issue, Contractor shall notify City of such opinion within three (3) days of receipt by Contractor. Contractor shall implement reasonably required safeguards as identified by any audit of Contractor's data privacy and information security program or promptly notify City in writing if Contractor is unable to implement mitigation measures to address the issue(s). Upon any such notification, City shall have the right, without further obligation or liability to Contractor, to terminate this Term Sheet and the Agreement. Any failure by Contractor to comply with this Section shall be a material breach of this Term Sheet and the Agreement.

7.3.2 **Audit of Contractor's Policies.** Contractor agrees to make its policies, procedures and practices regarding Data Security available to City, if needed, and agrees that City reserves the rights including, but not limited to, making a site visit, scanning for malicious codes, and hiring a third-party to perform a security audit if City determines that the Audit Report is unsatisfactory.

7.3.3 **Information Security Audits.** Contractor must contract with an independent third party to perform yearly information security audits of their primary and backup Data Centers. The annual audits must include an outside penetration/vulnerability test, and internal penetration and vulnerability tests with the third-party directly on the internal network. The summary results of the audits must be shared with the City. All audit findings must be remedied.

7.3.4 **Audit Findings.** Contractor shall implement reasonably required safeguards as identified by City or by any audit of Contractor's data privacy and information security program.

Article 8 Force Majeure

8.1 **Liability.** No Party shall be liable for delay in the performance of its obligations under this Term Sheet if and to the extent such 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"). In the case of a Force Majeure Event, Contractor shall immediately commence disaster recovery services as described in Section 7.4 of this Term Sheet.

8.2 **Duration.** In a Force Majeure 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.

8.3 **Effect.** If a Force Majeure Event 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 Term Sheet and the accompanying Purchase Order so affected and the charges payable hereunder shall be equitably adjusted to reflect those terminated Services; or (ii) City may terminate this Term Sheet and the accompanying Purchase Order 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.

8.4 **Disaster Recovery.** In the event of a disaster, as defined below, Contractor shall provide disaster recovery services in accordance with the provisions of the disaster recovery plan set forth in this Term Sheet, the Agreement, and/or accompanying Purchase Orders. Notwithstanding Section 8.1, 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 twenty-four (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 Term Sheet and the accompanying Purchase Order. For purposes of this Term Sheet, 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.

Article 9 Appendices

9.1 **Additional Appendices.** The following appendices are hereby attached and incorporated into this Term Sheet and the Agreement as though fully set forth herein and together form the complete agreement between the Parties:

Appendices:

A. SaaS Application & Hosting Services

B. Service Level Obligations

C. Disaster Recovery Plan

Appendix A

SaaS Application & Hosting Services: Minimum Requirements

The following represent minimum requirements that Contractor shall meet or exceed with regard to its SaaS Application & Hosting Services.

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

I. Description of the SaaS Application and Hosted Services. "SaaS Application and Hosted Services" are set forth in the Term Sheet, the Agreement, and/or accompanying Purchase Orders.

A. Software. Use of Contractor's Software operating on hosted equipment located at Contractor's facility and/or any Data Center as further outlined in the Term Sheet, the Agreement, and/or accompanying Purchase Orders.

B. Third-Party Software.

1. Providing certain third-party software required to operate the SaaS Software and other bundled third-party software packages required to support the operation of the SaaS Software.

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 City's 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 City 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 with a duration that matches the agreed-upon backup schedule and retention 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 Back-up 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 City and Contractor for the evaluation and eventual promotion of SaaS Software updates, patches, fixes or otherwise deemed tests. Test Environment shall perform at 50% or better of 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 Article 7 of this Term Sheet.

G. Availability of SaaS Services. Contractor (or its Hosting Service contractor) shall host the SaaS Services on computers owned or controlled by 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 this Term Sheet 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.**

i. Contractor shall conduct Scheduled SaaS Maintenance during the following hours: Saturdays between 12 AM (Pacific Time) and 8 AM (Pacific Time), with the same exclusions noted in subsection 1, above.

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

3. **Unscheduled SaaS Maintenance.** Contractor shall 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. If Contractor fails to meet this obligation for a period of three (3) successive calendar months, Contractor shall furnish City with a Performance Credit in the amount of 10% of the Services Fees (as calculated on a monthly basis for the reporting month).

4. **Emergency Maintenance.** If Force Majeure Events 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 shall provide notice to users by posting a web page that indicates that the site is temporarily unavailable and to please come back later. Contractor shall also provide advanced e-mail notice to the City email(s) to which the license(s) are registered, 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 the Term Sheet and the Agreement, Contractor shall not reduce or eliminate functionality in SaaS Services. Where Contractor has reduced or eliminated functionality in SaaS Services, City, in its sole election, shall: (i) have, in addition to any other rights and remedies under the Term Sheet and the Agreement or at law, the right to immediately terminate the Term Sheet and the Agreement and be entitled to a return of any prepaid fees; or (ii) determine the value of the reduced or eliminated functionality and Contractor shall immediately adjust the Services fees accordingly on a prospective basis. 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. Contractor, or any previously approved subcontractor, shall provide the Services (including data storage) solely from within the continental United States and on computing and data storage devices residing in the United States.

B. Data Center Standards.

Contractor's Data Centers shall have fully redundant and diverse network paths to City endpoints. Data Centers shall be located in geographically different seismic zones characterized by the lowest predicted chance of damage as defined by the US Geological Survey Earthquake Hazards Program.

Environmental systems must monitor/detect temperature, humidity, fluid leaks, and fire/smoke/particulate and have accompanying suppression systems. Fire suppression systems should be dry pipe. Power should be fully conditioned to avoid spikes and other aberrations that can damage equipment. Temporary power units, such as generators, must be in place to support SaaS Services in the event of a power outage for up to three (3) calendar days, and fuel replenishment contracts must be in place to keep temporary power operational for longer periods.

C. Location. The location of the approved Data Centers that will be used to host the SaaS Application will be clearly identified in the Agreement and/or accompanying Purchase Orders. They shall include a Primary Tier 3 Data Center and a Back-up Tier 2 Data Center.

D. 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. If applicable, the replacement Hosted Provider shall perform a SSAE 18, SOC 2, Type 2 Report and/or an SSAE 18, SOC 1, Type 2 Audit Report at least annually, in accordance with Section 13.3 of the Term Sheet.

E. Notice of Change. If the location of the Data Center used to host the SaaS Application is changed, Contractor shall provide City with written notice of said change at least sixty (60) days prior to any such change taking place. Contractor shall disclose the address of the new facility, which shall be within the United States. The Data Centers referenced above are subcontractors that must be approved by City.

F. 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 the Term Sheet and the 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 the Term Sheet and the Agreement. Contractor's use of subcontractors shall not relieve Contractor of any of its duties or obligations under the Term Sheet and the Agreement.

III. SaaS Maintenance Services.

A. The SaaS Software maintained under this Term Sheet and the Agreement shall be the SaaS Software set forth in the Term Sheet, Agreement, and/or accompanying Purchase Orders.

B. The following SaaS Maintenance Services are included as part of the Term Sheet and the 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) that the functionality of the SaaS Software and Services, as described in the Documentation, is available to Authorized Users; (b) that the functionality of the SaaS Software and Services is in accordance with the representations and warranties set forth herein including, but not limited to, the SaaS Software and Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the Documentation; (c) that the Service Level Standards can be achieved; and (d) that the SaaS Software Services work with the non-hosted browser version.

The following provisions shall also apply, but only if the City provides Contractor with a written request so naming each section below upon issuance of the Agreement and accompanying Purchase Orders:

i. **Planning.** Contractor must assist the City with the planning and logistics of upgrades and updates.

ii. **Technical Assistance.** Contractor must provide technical assistance regarding release notes, new functionality, and new application workflows.

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

iv. **Software Releases.** 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.

v. **Testing.** After the evaluation period, Contractor shall conduct a deployment of the revision to the City 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 shall have forty-five (45) calendar day test window in which City has ability to test and raise issues with Contractor. Test environment deployment activities will be conducted during a mutually agreed-to time window and may not necessarily align with the production maintenance windows as described within this document.

vi. **Severity 1 and Severity 2 Incident Correction.** If a SaaS Severity Level 1 or Severity Level 2 Issue is identified and appropriately triaged and classified by both Contractor and City during the test environment deployment test window, Contractor shall correct the SaaS Issue. The severity of a SaaS Issue will be initially defined by the City and confirmed by Contractor. Until the SaaS Issue has been resolved, the Severity Level may be raised or lowered based on Contractor's analysis of impact to business. 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.

vii. **Testing Suspension.** 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.

viii. **Software Promotion.** 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.

ix. **Documentation.** 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 SaaS Software Errors or other minor discrepancies will be provided to Contractor's customers when available.

x. **Training.** Contractor must provide standard training using Contractor's upgrade tools and provide ongoing knowledge transfer to the City.

2. **Third-Party Software Revisions.** At its election, Contractor will provide periodic software revisions of Third-Party Software with the SaaS Software 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 a significant security threat identified in Contractor's 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 installation 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 the Agreement and accompanying Purchase Orders.

C. Response to SaaS Issues. Contractor shall 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 defined under Section V of this Appendix (Technical Support).

D. SaaS Software Maintenance Acceptance Period. Unless 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. If the 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 shall use commercially reasonable efforts to ensure that all hardware (including servers, routers, and other related equipment) on which the SaaS Application is deployed are attached to back-up 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 Data Center required under Section (I)(E) of this Appendix.

IV. City Responsibilities.

A. City shall provide Contractor with timely notification of any SaaS Issues or SaaS Software Errors by either of these methods:

1. **Contacting Contractor's Customer Support;** or

2. **By entering the problem on Contractor's Service Portal**.

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

C. SaaS Incident Manager: 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.

D. Discovery of SaaS Software Errors. Upon discovery of a SaaS Software 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 SaaS Software Error and the operating conditions under which the SaaS Software Error occurred or was discovered.

V. 24X7 Technical Support.

A. 24x7 Technical Support. Authorized Users will make Technical Support requests 24/7 by calling or emailing Contractor's Technical Support staff or by submitting a request via Contractor's service desk web portal. The Technical Support staff shall assign to the request the Incident Severity Level (as defined herein) indicated by the City. Severity Level 1 and 2 Incidents items will be addressed 24/7/365. Severity Level 3 and 4 Incidents will be addressed during the standard business hours of 6:00 a.m. - 6:00 p.m. US Pacific Time.

Incident Severity Level	***Target Response Time***
Severity Level 1: 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, preventing operation of the business.	Request Response Time: 15 minutes. Request Resolution Time Target: < 2 hours. Maximum Permitted Request Resolution Time: < 12 hours ***City shall be entitled to a Service Credit of 15% of the Monthly Hosting Fee paid for each failure timely to achieve resolution. If Fees are paid annually, the 15% shall apply to 1/12 of that annual fee.***
Severity Level 2: 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.	Request Response Time: 30 minutes Request Resolution Time Target: < 4 hours Maximum Permitted Request Resolution Time: < 48 hours ***City shall be entitled to a Service Credit of 10% of the Monthly Hosting Fee paid for each failure timely to achieve resolution. If Fees are paid annually, the 10% shall apply to 1/12 of that annual fee.***

Incident Severity Level	***Target Response Time***
Severity Level 3: 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.	Request Response Time: 1 hr. Request Resolution Time Target: < 8 hours Maximum Permitted Request Resolution Time: < 96 hours ***City shall be entitled to a Service Credit of 5% of the Monthly Hosting Fee paid for each failure timely to achieve resolution. If Fees are paid annually, the 15% shall apply to 1/12 of that annual fee.***
Severity Level 4: There is a problem or issue with no loss of service and no business impact.	Request Response Time: 4 hr. Request Resolution Time Target: < 96 hours Maximum Permitted Request Resolution Time: < 7 days

1. SERVICE CREDIT ESCALATION.

In the event of a Severity Level 1 issue that is not resolved sufficiently quickly as determined in the City's sole discretion, City may escalate the problem to Contractor's Chief Technology Officer.

2. ROOT CAUSE ANALYSIS.

Following the resolution of a Severity Level 1 OR Level 2 incident, Contractor will discuss with City the cause of the failure, the actions Contractor took to resolve the failure, a timeline of the event and the actions Contractor plans to take to prevent such failure from recurring, and, if requested, Contractor will provide City a written summary of such discussion. Contractor will, on request, provide detailed documentation of the root cause analysis and preventative actions taken or planned with clear dates for completion of the action(s).

Appendix B

Service Level Obligations: Minimum Requirements

The following represent minimum requirements that Contractor shall meet or exceed with regards to its Service Level Obligations.

A. Time is of the Essence. For the term of the Term Sheet and the 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.

a. Definitions.

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

ii. Scheduled Downtime: The total minutes in the reporting month during which Scheduled SaaS Maintenance was performed.

iii. Scheduled Uptime: The total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.

b. Service Level Standard. Services shall be available to Authorized Users for normal use 100% of the Scheduled Uptime.

i. Calculation: (Actual Uptime / Scheduled Uptime) * 100 = Percentage Uptime (as calculated by rounding to the second decimal point)

ii. 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 99.9%:** City shall be due a Performance Credit in the amount of 20% 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.

a. Definition(s).

i. 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.

ii. **Total Transactions:** The total of Transactions occurring in the reporting month.

iii. **Transaction(s):** Services web page loads, Services web page displays, and Authorized User Services requests.

b. **Service Level Standard.** Transactions shall have a Response Time of two (2) seconds or less 99.9% of the time each reporting month during the periods for which the Services are available.

i. **Calculation:** ((Total Transactions – Total Transactions failing Standard) / Total Transactions) * 100 = Percentage Response Time (as calculated by rounding to the second decimal point).

ii. **Performance Credit.**

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

2) **Where Percentage Response Time is equal to or less than 99%:** City shall be due a Performance Credit in the amount of 20% 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.**

a. **Definition.**

i. **Total Problems:** The total number of problems occurring in the reporting month.

b. **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.

i. **Calculation:** ((Total Problems – Total Problems failing Standard) / Total Problems) * 100 = Percentage Problem Response (as calculated by rounding to the second decimal point). Note: This Calculation must be completed for each SaaS Severity Level.

ii. Performance Credit.

1) **SaaS Severity Level 1 – 2.**

i) **Where Percentage Problem Response is greater than 99.9%:** No Performance Credit will be due to City.

ii) **Where Percentage Problem Response is equal to or less than 99%:** City shall be due a Performance Credit in the amount of 20% 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 99.9%:** No Performance Credit will be due to City.

ii) **Where Percentage Problem Response is equal to or less than 99%:** City shall be due a Performance Credit in the amount of 20% 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 (15th) 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 the Term Sheet and the Agreement or at law, the right to immediately terminate the Term Sheet and the 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, and upon written request by City upon issuance of the Agreement and accompanying Purchase Orders, 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.

Appendix C

Disaster Recovery Plan: Minimum Requirements

The following represent minimum requirements that Contractor shall meet or exceed with regard to its Disaster Recovery Plan.

A. In the case of emergency or failure, this Disaster Recovery plan will be used to restore and continue service. Disaster Recovery is required when Contractor, in good faith, feels that an emergency failure jeopardizes its ability to meet its Service Level Obligations. Contractor shall use best efforts to restore operations at the same location or, at Contractor's discretion, a backup location. City acknowledges and agrees that such an event may result in partial or degraded service when restored. The pre-disaster/loss level of service shall be restored as soon as commercially reasonable.

B. **Restoration Targets:** Restoration of services timeframes will be defined and measured as Recovery Point Objectives and Recovery Time Objectives.

C. **Recovery Point Objective:** The Recovery Point Objective (RPO) is defined to be the maximum acceptable amount of data loss for which City may experience due to a temporary loss of hosted services and applications. Contractor shall deliver a maximum RPO of eight (8) hours based on incremental backups being made available between production and backup facilities and recovery, if any, of production data.

D. **The Recovery Time Objective:** The Recovery Time Objective (RTO) is the maximum period of continuous time during which access to the SaaS Application shall not be available to the City. Contractor shall deliver a maximum RTO of forty-eight (48) hours for the SaaS Application.

E. **Data Synchronization:** Data Synchronization is the act of replicating or "mirroring" data from the Primary Environment to an off-site "backup" location (the Back-up Tier 2 Data Center). Data Synchronization is to be used in the case of a Disaster Recovery event to restore service. Data Synchronization must occur at a set interval of once per eight (8) hours for incremental data set changes and weekly for a full backup.

F. **Recovery Testing:** Contractor shall regularly test and exercise the Disaster Recovery Plan to ensure that the Tier 2 Back-up Data Center and Data Synchronization processes are functioning as expected. City shall allow for a maximum of a two (2) week runtime within the Back-Up Data Center before returning system operation to Primary Data Center.

G. **Backup and Recovery:** Backups of the production servers will occur every 8 hours, retained for thirty (30) days, and stored locally at the primary data center on a separate managed storage device. These images will be used to recover servers if any issues occur. The backup images will periodically be replicated throughout the day to the secondary staged server environment for the purposes of site recovery. This replication will occur on a private protected fiber ring connecting the two data centers. In the event of a site disaster, a request

can be made to the support desk and the most current server image set can be brought up as the production environment.

City and County of San Francisco Technology Marketplace

Software License, Maintenance, and Technical Services Term Sheet

This Software License, Maintenance, and Technical Services Term Sheet ("Term Sheet") is attached, and incorporated as though fully set forth therein, to each Purchase Order for software license, maintenance, and technical services hereby issued by the City and County of San Francisco ("City") under Contractor's OCA Technology Marketplace Master Agreement to which this Term Sheet is attached ("Agreement"). Capitalized terms used in this Term Sheet that are not otherwise defined have the meanings given them in the Agreement.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Term Sheet:

1.1 "Acceptance" means a notice from the City to Contractor that the Licensed Software meets the specifications contained in the Documentation. City's Acceptance of the Licensed Software shall be governed by the procedures set forth in Section 4.3.

1.2 "Agreement" means the Agreement to which this Term Sheet is attached and incorporated and this Term Sheet, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into the Agreement by reference as provided herein.

1.3 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and the requesting department.

1.4 "CMD" means the Contract Monitoring Division of the City.

1.5 "Confidential Information" means confidential City information including, but not limited to, personal identifiable information ("PII"), protected health information, or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act/California Consumer Privacy Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M.

1.6 "Contractor" or "Consultant" means the Contractor with whom the City has entered into the Agreement and the entity to whom a Purchase Order is hereby issued for the purchase of one or more perpetual software licenses.

1.7 "Deliverables" means Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of this Term Sheet and the Agreement, including without limitation, the work product described in the accompanying Purchase Order and Corresponding Documents.

1.8 "Documentation" means the technical publications relating to the use of the Licensed Software, such as reference, installation, administrative and programmer manuals, provided by Contractor to City.

1.9 "Errors, Defects, and Malfunctions" means either a deviation between the function of the Software and the Documentation furnished by Contractor for the Software, or a failure of the Software that degrades the use of the Software.

1.10 "Fix" means repair or replacement of source, object, or executable code in the Software to remedy an Error, Defect, or Malfunction.

1.11 "Licensed Software" or "Software" means one or more of the proprietary computer software programs identified in the Agreement and/or accompanying Purchase Orders, all related materials, Documentation, all corrections, patches or updates thereto, and other written information received by City from Contractor, whether in machine-readable or printed form. The Agreement and/or accompanying Purchase Order may identify more than one software product or more than one copy of any product.

1.12 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.13 "Object Code" means the machine-readable form of the Licensed Software provided by Contractor.

1.14 "Party" or "Parties" means, respectively, the City and Contractor either individually or collectively.

1.15 "Patch" means a temporary repair or replacement of code in the Software to remedy an Error, Defect, or Malfunction. Patches may be made permanent and released in Subsequent Releases of the Software.

1.16 "Priority Category" means a priority assigned to an Error, Defect or Malfunction, designating the urgency of correcting an Error, Defect, or Malfunction. Assignment of a Priority Category to an Error, Defect, or Malfunction is based on City's determination of the severity of the Error, Defect, or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect, or Malfunction.

1.17 "Priority Protocol" means a priority based on the Priority Category; rules specifying the turnaround time for correcting Errors, Malfunctions, and Defects; escalation procedures; and personnel assignment.

1.18 "Purchase Order" means the accompanying Purchase Order and any other corresponding documents ("Corresponding Documents") in response to a request for quote by City for the software license, maintenance, and technical Services described in the Purchase Order. The Purchase Order is issued by City to Contractor pursuant to the Agreement. The Purchase Order and all Corresponding Documents are incorporated into this Term Sheet as though fully set forth herein.

1.19 "Services" means the work performed by Contractor under this Term Sheet and the Agreement including all services, labor, supervision, materials, equipment, actions, and other requirements to be performed and furnished by Contractor under this Term Sheet and the Agreement.

1.20 "Source Code" means the human readable compliable form of the Licensed Software to be provided by Contractor.

1.21 "Specifications" mean the functional and operational characteristics of the Licensed Software as described in Contractor's current published product descriptions and technical manuals.

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

1.23 "Support Services" means the Software support service required under this Term Sheet and the Agreement. Support Services include correcting an Error, Defect, or Malfunction; providing telephone and/or online support concerning the installation and use of the Software; training in the installation and use of the Software; on-site consulting and application development services; detection, warning, and correction of viruses; and disabled/disabling code.

1.24 "Term Sheet" means this document, the accompanying Purchase Order, all attached exhibits, and all applicable City Ordinances and Mandatory City Requirements in the Agreement that are specifically incorporated into this Term Sheet by reference as provided herein.

1.25 "Upgrade" means either an enhancement to the Software code to add new features or functions to the system or software programming revisions containing corrections to Errors, Defects, and Malfunctions that have been reported by users or discovered by the Contractor.

1.26 "Warranty Period" means a period commencing with the installation of the Software product during which reported Errors, Defects, and Malfunctions for Software products are corrected without charge in accordance with the provisions below.

1.27 "Workaround" means a change in the procedures followed or end user operation of the Software to avoid an Error, Defect, or Malfunction without significantly impairing functionality or degrading the use of the Software.

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 City. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the City, unless otherwise indicated by the context.

Article 2 Term of the Term Sheet

2.1 **License, and Maintenance Support and Technical Services Term.** The term of this Term Sheet shall reflect the term of the Support Services and technical services set forth in the accompanying Purchase Order and Corresponding Documents, unless earlier terminated in

accordance with the provisions of this Term Sheet and the Agreement. Subject to Section 4.1 ("Grant of License"), the license granted under this Term Sheet and the Agreement shall commence upon Acceptance of the Licensed Software and shall continue in perpetuity unless sooner terminated in accordance with the provisions of this Term Sheet and the Agreement, or during the term outlined in the Agreement or accompanying Purchase Order, unless sooner terminated in accordance with the provisions of this Term Sheet and the Agreement.

Article 3 Financial Matters

3.1 **Compensation.**

3.1.1 **Charges for Maintenance and Support Services.**

(1) **Limited Term License.** When the license term specified in the Purchase Order and Corresponding Documents is less than perpetual, all charges for maintenance and Support Services are included in the periodic license or rental fee.

(2) **Perpetual License.** Where the license term specified in the Purchase Order and Corresponding Documents is perpetual, all charges for maintenance and Support Services are as stated in the Purchase Order and Corresponding Documents.

(3) **Periodic Payment License.** If the license fee specified in the Purchase Order and Corresponding Documents is payable in periodic payments, there will be no additional charge for maintenance and Support Services during the period for which such periodic payments are payable or the first year of the term, whichever is longer.

(4) **Lump Sum Payment Licenses.** If the license fee specified in the Purchase Order and Corresponding Documents is payable in one lump sum, there will be no additional charge for the maintenance and Support Services during the first year of the term.

(5) **Annual Maintenance and Support Charges.** Annual maintenance and Support Services charges shall not increase more than the amount stated in the accompanying Purchase Order. Notwithstanding the foregoing, if not stated in the accompanying Purchase Order, then Support Services charges shall not increase more than five percent (5%) of the rate of the year immediately prior to such increase. Contractor will make maintenance and Support Services available to City for the duration stated in the Purchase Order.

Article 4 License

4.1 **Grant of License.**

4.1.1 **Grant of License.** Subject to the terms and conditions of this Term Sheet and the Agreement, Contractor grants City a non-exclusive and non-transferable license to use the Licensed Software. City acknowledges and agrees that the Licensed Software is the proprietary information of Contractor and that this Term Sheet and the Agreement grants City no title or right of ownership in the Licensed Software.

Contractor agrees that in the event it discontinues its obligations under the terms of this Term Sheet and the Agreement, except as expressly provided for in Article 8 ("Survival") of the Agreement, or ceases to market and/or provide maintenance and Support Services for the Licensed Software, and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, it will provide City, without charge, one (1) copy of the then-current

Source Code for all of the programs and all supporting Documentation for the Licensed Software then operating and installed at City's locations. If City should obtain the Source Code and the Documentation pursuant to this section, the only use made of the Source Code and the Documentation will be for the proper maintenance of the Licensed Software in connection with City's use of the Licensed Software as provided for, and limited by, the provisions of this Term Sheet and the Agreement.

Notwithstanding anything to the contrary in the Purchase Order and Corresponding Documents, and upon written request by City in the accompanying Purchase Order, in furtherance of its obligations as stated above, Contractor will provide to City a copy of the Source Code which corresponds to the most current version of the Licensed Software. Contractor agrees to update, enhance or otherwise modify such Source Code promptly upon its release of a new version of the Licensed Software to its other Licensees such that the Source Code is maintained as corresponding to the newest released version of the Licensed Software. City's right to possession of the Source Code will be governed by the accompanying Purchase Order.

4.1.2 **Restrictions on Use.** City is authorized to use the Licensed Software only for City's municipal purposes.

4.1.3 **Disaster Recovery Copy.** For the purpose of any bona fide City disaster recovery plan or with respect to the use of computer software in its municipal operations, City may make one copy of the Licensed Software for archival purposes and use such archival copy to restore use of the Licensed Software on a site owned or controlled by City. The use of such archival copy shall be limited to (1) the purpose of conducting limited testing of the disaster recovery plan's procedures and effectiveness and (2) during any period subsequent to the occurrence of an actual disaster during which the City cannot operate the Licensed Software on the existing site.

4.1.4 **Transfer of Products.** City may move the Licensed Software and supporting materials to another City site.

4.1.5 **Documentation.** Contractor shall provide City with the Licensed Software specified in this Term Sheet and the Agreement, and a minimum of two copies of the Documentation per installation. Contractor grants to City permission to duplicate all printed Documentation for City's municipal use.

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

4.1.7 **Authorized Modification.** City shall also be permitted to develop, use and modify Application Program Interfaces (APIs), macros, and user interfaces. For purposes of this Term Sheet and the Agreement, such development shall be deemed an authorized modification. Contractor shall make no claim under this Term Sheet and the Agreement to ownership of any APIs, macros or other interfaces developed by or at the direction of the City.

Contractor has no general objection to the City's use of third-party programs in conjunction with the Licensed Software under this Term Sheet and the Agreement. Contractor recognizes that City has and will license third party programs that City will use with Contractor's products. Based on information provided to Contractor as to the Effective Date, Contractor agrees that

such use does not constitute an unauthorized modification or violate the licenses granted under this Term Sheet and the Agreement.

4.2 **Delivery.**

4.2.1 **Delivery.** One copy of each of the Licensed Software products in computer readable form shall be shipped to the City not later than thirty (30) days upon issuance of the accompanying Purchase Order. Program storage media (magnetic tapes, disks and the like) and shipping shall be provided at no charge by Contractor.

4.2.2 **Installation.** If applicable, and upon written request by City in the accompanying Purchase Order, Contractor shall install the programs in accordance with the terms set forth in the accompanying Purchase Order.

4.2.3 **Risk of Loss.** If any of the Licensed Software products are lost or damaged during shipment or before installation is completed, Contractor shall promptly replace such products, including the replacement of program storage media if necessary, at no additional charge to the City. If any of the Licensed Software products are lost or damaged while in the possession of the City, Contractor will promptly replace such products without charge, except for program storage media, unless supplied by the City.

4.3 **Acceptance Testing.** After Contractor has installed and configured the Licensed Software pursuant to this Term Sheet and the Agreement, the City shall have a period of **thirty** (30) days ("Acceptance Testing Period") from the date of installation to verify that the Licensed Software substantially performs to the specifications contained in the Documentation. In the event that the City determines that the Licensed Software does not meet such specifications, the City shall notify the Contractor in writing, and Contractor shall modify or correct the Licensed Software 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 Licensed Software does not meet the Acceptance criteria of this section, then City shall be entitled to terminate this license in accordance with the procedures specified in Section 8.2 ("Termination for Default; Remedies") of the Agreement, and shall be entitled to a full refund of the license fee.

4.4 **Training.** If applicable, and upon written request by City in the accompanying Purchase Order, Contractor will provide training in accordance with the terms set forth in the accompanying Purchase Order at Contractor's current best government rates.

4.5 **Warranties: Right to Grant License.** Contractor hereby warrants that it has title to and/or the authority to grant a license of the Licensed Software to the City.

4.6 **Warranties: Conformity to Specifications.** Contractor warrants that when the Licensed Software specified in the accompanying Purchase Order and Corresponding Documents and all updates and improvements to the Licensed Software are delivered to City, they will be free from defects as to design, material, and workmanship and will perform in accordance with the Contractor's published specifications for the Licensed Software for a period of 365 days from City's Acceptance of such Licensed Software or the manufacturer's warranty period, whichever is longer.

4.7 **Nondisclosure.** City agrees that it shall treat the Licensed Software 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 Licensed Software is Accepted by the City until the license is terminated as provided herein. The obligations of the City set forth above, however, shall not apply to the Licensed Software, or any portion thereof, which:

4.7.1 is now or hereafter becomes publicly known;

4.7.2 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;

4.7.3 is known to the City prior to its receipt of the Licensed Software;

4.7.4 is subsequently developed by the City independently of any disclosures made hereunder by Contractor;

4.7.5 is disclosed with Contractor's prior written consent;

4.7.6 is disclosed by Contractor to a third party without similar restrictions.

Article 5 Services and Resources

5.1 **Services Contractor Agrees to Perform.** In addition to the Licensed Software maintenance and Support Services described in Article 6 of this Term Sheet, Contractor agrees to perform the Services provided for in the Agreement.

Article 6 Software Maintenance and Support Services

6.1 **Maintenance and Support Services.**

6.1.1 **Maintenance and Support Services.** After Acceptance of the Licensed Software and subject to the terms, conditions, and charges set forth in this Section, Contractor will provide City with maintenance and Support Services for the Licensed Software as follows: (i) Contractor will provide such assistance as necessary to cause the Licensed Software to perform in accordance with the Specifications as set forth in the Documentation; (ii) Contractor will provide, for City's use, whatever improvements, enhancements, Upgrades, extensions and other changes to the Licensed Software Contractor may develop; and (iii) Contractor will update the Licensed Software, as required, to cause it to operate under new versions or releases of the operating system specified in this Term Sheet and the Agreement so long as such updates, or Upgrades are made generally available to Contractor's other licensees.

6.1.2 **Changes in Operating System.** If City desires to obtain a version of the Licensed Software that operates under an operating system not specified in this Term Sheet and the Agreement, Contractor will provide City with the appropriate version of the Licensed Software, if available, on a ninety (90) day trial basis without additional charge, provided City has paid all maintenance and support charges then due. At the end of the ninety (90) day trial period, City must elect one of the following three options: (i) City may retain and continue the old version of the Licensed Software, return the new version to Contractor and continue to pay the applicable rental or license fee and maintenance charges for the old version; (ii) City may retain and use the new version of the Licensed Software and return the old version to Contractor, provided City pays Contractor the applicable rental or license fee and maintenance charges for the new version of the Licensed Software; or (iii) City may retain and use both versions of the products, provided City pays Contractor the applicable rental or license fee and maintenance

charges for both versions of the Licensed Software. City will promptly issue the necessary document(s) to accomplish the above.

6.2 During the term of this Term Sheet and the Agreement, Contractor will furnish Error, Defect or Malfunction correction in accordance with the Priority Categories listed below, based on the City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect, or Malfunction.

6.2.1 **Priority 1:** An Error, Defect or Malfunction that renders the Software inoperative; or causes the Software to fail catastrophically.

6.2.2 **Priority 2:** An Error, Defect or Malfunction that substantially degrades the performance of the Software, but does not prohibit the City's use of the Software.

6.2.3 **Priority 3:** An Error, Defect or Malfunction that causes only a minor impact on the use of the Software.

6.3 Contractor will furnish Error, Defect, or Malfunction correction in accordance with the following protocols:

6.3.1 **Priority 1 Protocol:** Within two hours, Contractor assigns a product technical specialist(s) to diagnose and correct the Error, Defect, or Malfunction; thereafter, Contractor shall provide ongoing communication about the status of the correction; shall proceed to immediately provide a Fix, a Patch, or a Workaround; and exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect, or Malfunction in the next Subsequent Release. Contractor will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect, or Malfunction is corrected.

6.3.2 **Priority 2 Protocol:** Within four hours, Contractor assigns a product technical specialist(s) to diagnose the Error, Defect, or Malfunction and to commence correction of the Error, Defect or Malfunction; to immediately provide a Workaround; to provide escalation procedures as reasonably determined by Contractor's staff; and to exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Software maintenance release.

6.3.3 **Priority 3 Protocol:** Contractor may include a Fix or Patch in the next Software major release.

6.4 **Hotline Support.** Contractor shall provide remote access hotline support to City to help City answer routine questions with respect to the use of the Software. Contractor also shall provide remote access hotline support to City to initiate resolution of Priority 1 and Priority 2 Errors, Defects and Malfunctions. Hotline support shall be made available by phone between the hours of 8 a.m. and 6 p.m. Pacific time Monday through Friday, except legal holidays. Hotline support shall be available by electronic bulletin board, electronic mail or other service twenty-four (24) hours a day, seven (7) days a week. Responses to questions posted by electronic means will be made within the time frame established under Priority Protocols for an Error, Defect or Malfunction in a Software Product.

Article 7 Indemnity

7.1 **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 Software 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 Software 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 Software by reason of Infringement, or in Contractor's opinion City's use of the Licensed Software 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 Software as contemplated hereunder, (b) replace the Licensed Software with a non-infringing, functionally equivalent substitute Licensed Software, or (c) suitably modify the Licensed Software to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Licensed Software. If none of these options is reasonably available to Contractor, then the Agreement may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid under this Term Sheet and the accompanying Purchase Order for the license of such infringing Licensed Software. Any unauthorized modification or attempted modification of the Licensed Software by City or any failure by City to implement any improvements or updates to the Licensed Software, 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 Software with products or data of the type for which the Licensed Software was neither designed nor intended to be used.

Article 8 Survival

8.1 **Disposition of Licensed Software on Termination.** Upon termination of this Term Sheet for any reason other than as provided for in Section 4.1 ("Grant of License"), if the term of the Software License City has paid for is other than perpetual, City shall immediately: (i) return the Licensed Software to Contractor together with all Documentation; (ii) purge all copies of the Licensed Software or any portion thereof from all CPUs and from any computer storage medium or device on which City has placed or permitted others to place the Licensed Software; and (iii) give Contractor written certification that through its best efforts and to the best of its knowledge, City has complied with all of its obligations under this Section 8.1.

8.2 **Rights and Duties upon Termination or Expiration.** This Section and the following Sections of this Term Sheet listed below, shall survive termination or expiration of this Term Sheet and the Agreement:

4.1	Grant of License

Appendix B

Documentation of Transfer

Asset Purchase Agreement dated April 30, 2024
Bill of Sale and Assignment and Assumption Agreement dated May 1, 2024
Attorney Opinion Letter for Transferor dated June 24, 2024
Attorney Opinion Letter for Transferee dated July 1, 2024
ISSQUARED, Inc. Articles of Incorporation dated May 9, 2024

Appendix B

Asset Purchase Agreement

The Asset Purchase Agreement dated April 30, 2024 between Transferor and Transferee is attached on the following ninety-two (92) pages.

EXECUTION COPY

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "**Agreement**"), dated as of April 30, 2024, is entered into by and among CCT Technologies, Inc., a California corporation ("**Seller**"), and ISSQUARED, Inc., a California corporation ("**Buyer**").

RECITALS

A. Seller is engaged in the business of providing information technology (IT) solutions, logistic services and information technology (IT) products to local and state government institutions, K-12 schools, higher education institutions, and commercial businesses (the "**Business**"); and

B. Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, substantially all the assets, and certain specified liabilities, of the Business, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

The following terms have the meanings specified or referred to in this ARTICLE I:

"**Accounts Receivable**" has the meaning set forth in Section 2.01(a).

"**Acquisition Proposal**" has the meaning set forth in Section 6.03(a).

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity.

"**Affiliate**" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"**Agreement**" has the meaning set forth in the preamble.

"**Allocation Schedule**" has the meaning set forth in Section 2.07.

"**Ancillary Documents**" means the Bill of Sale and the other agreements, instruments, and documents required to be delivered at the Closing.

"**Assigned Contracts**" has the meaning set forth in Section 2.01(**c**).

"**Assumed Liabilities**" has the meaning set forth in Section **2.03**.

"**Audited Financial Statements**" has the meaning set forth in Section **4.04**.

"**Balance Sheet**" has the meaning set forth in Section **4.04**.

"**Balance Sheet Date**" has the meaning set forth in Section **4.04**.

"**Basket**" has the meaning set forth in Section 8.04(**a**).

"**Benefit Plan**" has the meaning set forth in Section 4.18(**a**).

"**Bill of Sale**" has the meaning set forth in Section 3.02(a)(**i**).

"**Books and Records**" has the meaning set forth in Section 2.01(**l**).

"**Business**" has the meaning set forth in the recitals.

"**Business Day**" means any day except Saturday, Sunday or any other day on which commercial banks located in New York, NY are authorized or required by Law to be closed for business.

"**Business IT Systems**" means all Software, computer hardware, servers, networks, platforms, peripherals, and similar or related items of automated, computerized, or other information technology (IT) networks and systems (including telecommunications networks and systems for voice, data, and video) owned, leased, licensed, or used (including through cloud-based or other third-party service providers) in the conduct of the Business.

"**Buyer**" has the meaning set forth in the preamble.

"**Buyer Closing Certificate**" has the meaning set forth in Section 7.03(**d**).

"**Buyer Indemnitees**" has the meaning set forth in Section **8.02**.

"**Cap**" has the meaning set forth in Section 8.04(**a**).

"**CARES Act**" means the Coronavirus Aid, Relief, and Economic Security Act of 2020, as amended, and all regulations and guidance issued by any Governmental Authority with respect thereto.

"**Closing**" has the meaning set forth in Section **3.01**.

"**Closing Date**" has the meaning set forth in Section **3.01**.

"**Closing Payment**" has the meaning set forth in Section **2.05**(a).

"**Closing Working Capital**" means: (a) Current Assets, less (b) Current Liabilities,

determined as of the open of business on the Closing Date. An example of a calculation of Closing Working Capital is attached hereto on Exhibit A.

"**Closing Working Capital Statement**" has the meaning set forth in Section 2.06(a).

"**COBRA**" means the requirements of Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the Code, any similar state law, and the rules and regulations issued thereunder and any successor statute and the rules and regulations issued thereunder.

"**Code**" means the Internal Revenue Code of 1986, as amended.

"**Contingent Payment**" has the meaning set forth in Section 2.05(d).

"**Contracts**" means all legally binding contracts, purchase orders, sales orders, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, and joint ventures.

"**Current Assets**" means the current assets of the Business included in the line items set forth on Exhibit A and only to the extent acquired pursuant to the terms of this Agreement.

"**Current Liabilities**" means the current liabilities of the Business included in the line items set forth on Exhibit A and only to the extent assumed pursuant to the terms of this Agreement.

"**Deferred Payment**" has the meaning set forth in Section 2.05(b).

"**Direct Claim**" has the meaning set forth in Section 8.05(c).

"**Disclosure Schedules**" means the Disclosure Schedules delivered by Seller and Buyer concurrently with the execution and delivery of this Agreement.

"**Disputed Amounts**" has the meaning set forth in Section 2.06(a)(iii).

"**Dollars or $**" means the lawful currency of the United States.

"**Encumbrance**" means any charge, claim, community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"**ERISA Affiliate**" means all employers (whether or not incorporated) that would be treated together with the Seller or any of its Affiliates as a "single employer" within the meaning of Section 414 of the Code or Section 4001 of ERISA.

"**Excluded Assets**" has the meaning set forth in Section 2.02.

"**Excluded Contracts**" has the meaning set forth in Section 2.02(a).

"**Excluded Liabilities**" has the meaning set forth in Section 2.04.

"**Financial Statements**" has the meaning set forth in Section 4.04.

"**GAAP**" means accounting principles generally accepted in the United States of America, in effect from time to time.

"**Government Contracts**" has the meaning set forth in Section 4.07(a)(vii).

"**Governmental Authority**" means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

"**Governmental Order**" means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority.

"**Guaranteed Obligations**" has the meaning set forth in Section 6.17.

"**Indemnified Party**" has the meaning set forth in Section 8.05.

"**Indemnifying Party**" has the meaning set forth in Section 8.05.

"**Independent Accountant**" has the meaning set forth in Section 2.06(a)(iii).

"**Insurance Policies**" has the meaning set forth in Section 4.15.

"**Intellectual Property**" means any and all rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other Governmental Authority-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models) ("**Patents**"); (b) trademarks, service marks, brands, certification marks, logos, trade dress, trade names, and other similar indicia of source or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications for registration, and renewals of, any of the foregoing ("**Trademarks**"); (c) copyrights and works of authorship, whether or not copyrightable, and all registrations, applications for registration, and renewals of any of the foregoing ("**Copyrights**"); (d) internet domain names and social media account or user names (including "handles"), whether or not Trademarks, all associated web addresses, URLs, websites and web pages, social media sites and pages, and all content and data thereon or relating thereto, whether or not Copyrights; (e) trade secrets, know-how, inventions (whether or not patentable), discoveries, improvements, technology, business and technical information, databases, data compilations and collections, tools, methods, processes, techniques, and other confidential and

proprietary information and all rights therein ("**Trade Secrets**"); (f) computer programs, operating systems, applications, firmware and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof ("**Software**"); (g) rights of publicity; and (h) all other intellectual or industrial property and proprietary rights.

"**Intellectual Property Agreements**" means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to any Intellectual Property that is used or held for use in the conduct of the Business as currently conducted or proposed to be conducted to which Seller is a party, beneficiary or otherwise bound.

"**Intellectual Property Assets**" means all Intellectual Property that is owned by Seller and used or held for use in the conduct of the Business as currently conducted or proposed to be conducted, together with all (a) royalties, fees, income, payments, and other proceeds now or hereafter due or payable to Seller with respect to such Intellectual Property; and (b) claims and causes of action with respect to such Intellectual Property, whether accruing before, on, or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal or equitable relief for past, present, or future infringement, misappropriation, or other violation thereof.

"**Intellectual Property Registrations**" means all Intellectual Property Assets that are subject to any issuance, registration, or application by or with any Governmental Authority or authorized private registrar in any jurisdiction, including issued Patents, registered Trademarks, domain names and Copyrights, and pending applications for any of the foregoing.

"**Interim Balance Sheet**" has the meaning set forth in Section **4.04**.

"**Interim Balance Sheet Date**" has the meaning set forth in Section **4.04**.

"**Interim Financial Statements**" has the meaning set forth in Section **4.04**.

"**Inventory**" has the meaning set forth in Section 2.01(b).

"**Knowledge of Seller or Seller's Knowledge**" or any other similar knowledge qualification, means the actual knowledge of Connie Tang, Doug Green and Cathy Souza, after due inquiry.

"**Law**" means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

"**Leased Real Property**" has the meaning set forth in Section 4.10(b).

"**Leases**" has the meaning set forth in Section 4.10(b).

"**Liabilities**" means liabilities, obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued,

matured or unmatured or otherwise.

"**Licensed Intellectual Property**" means all Intellectual Property in which Seller holds any rights or interests granted by other Persons, where that Intellectual Property is used or held for use in the conduct of the Business as currently conducted or proposed to be conducted.

"**Losses**" means losses, damages, liabilities, deficiencies, Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; *provided, however*, that "Losses" shall not include punitive damages, except to the extent actually awarded to a Governmental Authority or other third party.

"**Material Adverse Effect**" means any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) or assets of the Business, (b) the value of the Purchased Assets, or (c) the ability of Seller to consummate the transactions contemplated hereby on a timely basis; *provided, however,* that "Material Adverse Effect" shall not include any event, occurrence, fact, condition or change, directly or indirectly, arising out of or attributable to: (i) general economic or political conditions; (ii) conditions generally affecting the industries in which the Business operates; (iii) any changes in financial or securities markets in general; (iv) acts of war (whether or not declared), armed hostilities or terrorism, or the escalation or worsening thereof; (v) any action required or permitted by this Agreement, except pursuant to Section 4.03 and Section 6.07; (vi) any changes in applicable Laws or accounting rules, including GAAP; or (vii) the public announcement, pendency or completion of the transactions contemplated by this Agreement; *provided further, however,* that any event, occurrence, fact, condition or change referred to in clauses (i) through (iv) immediately above shall be taken into account in determining whether a Material Adverse Effect has occurred or could reasonably be expected to occur to the extent that such event, occurrence, fact, condition or change has a disproportionate effect on the Business compared to other participants in the industries in which the Business operates.

"**Material Contracts**" has the meaning set forth in Section 4.07(**a**).

"**Material Customers**" has the meaning set forth in Section 4.14(**a**).

"**Material Suppliers**" has the meaning set forth in Section 4.14(**b**).

"**Multiemployer Plan**" has the meaning set forth in Section 4.18(**c**).

"**Permits**" means all permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

"**Permitted Encumbrances**" has the meaning set forth in Section 4.08(**a**).

"**Person**" means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

"**Post-Closing Adjustment Amount**" has the meaning set forth in Section 2.06(a)(v).

"**Pre-Closing Tax Period**" means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

"**Purchase Price**" has the meaning set forth in Section **2.05**.

"**Purchased Assets**" has the meaning set forth in Section **2.01**.

"**Qualified Benefit Plan**" has the meaning set forth in Section 4.18(**c**).

"**Representative**" means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

"**Resolution Period**" has the meaning set forth in Section **2.06**(a)(ii).

"**Review Period**" has the meaning set forth in Section **2.06**(b)(i).

"**Seller**" has the meaning set forth in the preamble.

"**Seller Closing Certificate**" has the meaning set forth in Section 7.02(**g**).

"**Seller Indemnitees**" has the meaning set forth in Section **8.03**.

"**Single Employer Plan**" has the meaning set forth in Section 4.18(**c**).

"**Statement of Objections**" has the meaning set forth in Section **2.06**(a)(ii).

"**Tangible Personal Property**" has the meaning set forth in Section 2.01(**e**).

"**Target Working Capital**" means $0.00.

"**Tax Return**" means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"**Taxes**" means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

"**Third Party Claim**" has the meaning set forth in Section 8.05(**a**).

"**Undisputed Amounts**" has the meaning set forth in Section **2.06**(a)(iii).

"**Union**" has the meaning set forth in Section 4.19(**b**).

"**WARN Act**" means the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign Laws related to plant closings, relocations, mass layoffs and employment losses.

ARTICLE II
PURCHASE AND SALE

Section 2.01 Purchase and Sale of Assets. Subject to the terms and conditions set forth herein, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller's right, title and interest in, to and under all of the assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located (other than the Excluded Assets), which relate to, or are used or held for use in connection with, the Business (collectively, the "**Purchased Assets**"), including, without limitation, the following:

(a) all accounts or notes receivable held by Seller, and any security, claim, remedy or other right related to any of the foregoing ("**Accounts Receivable**");

(b) all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories ("**Inventory**");

(c) all Contracts, including Intellectual Property Agreements, set forth on Exhibit B (the "**Assigned Contracts**");

(d) all Intellectual Property Assets;

(e) all furniture, fixtures, equipment, machinery, tools, vehicles, office equipment, supplies, computers, telephones and other tangible personal property (the "**Tangible Personal Property**");

(f) all Leased Real Property;

(g) all Permits which are held by Seller and required for the conduct of the Business as currently conducted or for the ownership and use of the Purchased Assets, including, without limitation, those listed on Section 4.17(**b**) of the Disclosure Schedules;

(h) all rights to any Actions of any nature available to or being pursued by Seller to the extent related to the Business, the Purchased Assets or the Assumed Liabilities, whether arising by way of counterclaim or otherwise;

(i) all prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums and fees;

(j) all of Seller's rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets;

(k) all insurance benefits, including rights and proceeds, arising from or relating to the Business, the Purchased Assets or the Assumed Liabilities;

(l) originals, or where not available, copies, of all books and records, including, but not limited to, books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any Governmental Authority), sales material and records (including pricing history, total sales, terms and conditions of sale, sales and pricing policies and practices), strategic plans, internal financial statements, marketing and promotional surveys, material and research and files relating to the Intellectual Property Assets and the Intellectual Property Agreements ("**Books and Records**"); and

(m) all goodwill and the going concern value of the Business.

Section 2.02 Excluded Assets. Notwithstanding the foregoing, the Purchased Assets shall not include Seller's right, title and interest in and to the following assets (collectively, the "**Excluded Assets**"):

(a) Contracts, including Intellectual Property Agreements, that are not Assigned Contracts (the "**Excluded Contracts**");

(b) all cash and cash equivalents;

(c) all prepaid income Taxes (and assets attributable thereto) and Tax refunds and any "employee retention credit" pursuant to Section 2301 of the CARES Act, in each case, attributable to periods prior to the Closing Date;

(d) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Seller;

(e) all Benefit Plans and assets attributable thereto;

(f) the assets, properties and rights specifically set forth on Exhibit C; and

(g) the rights which accrue or will accrue to Seller under this Agreement and/or the Ancillary Documents.

Section 2.03 Assumed Liabilities. Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge when due only the following Liabilities of Seller (collectively, the "**Assumed Liabilities**"), and no other Liabilities:

(a) all trade accounts payable of Seller to third parties in connection with the Business pursuant to the Assigned Contracts, to the extent that such trade accounts payable remain unpaid and are not past due as of the Closing Date and that arose in the ordinary course of business consistent with past practice; and

(b) all Liabilities in respect of the Assigned Contracts but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date, were incurred in the ordinary course of business and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing.

Section 2.04 Excluded Liabilities. Notwithstanding the provisions of Section 2.03 or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Seller or any of its Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the "**Excluded Liabilities**"). Seller shall, and shall cause each of its Affiliates to, pay and satisfy in due course all Excluded Liabilities which they are obligated to pay and satisfy. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

(a) any Liabilities of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the Ancillary Documents and the transactions contemplated hereby and thereby, including, without limitation, fees and expenses of counsel, accountants, consultants, advisers and others;

(b) any Liability for (i) Taxes of Seller (or any stockholder or Affiliate of Seller) or relating to the Business, the Purchased Assets or the Assumed Liabilities for any Pre-Closing Tax Period; (ii) Taxes that arise out of the consummation of the transactions contemplated hereby or that are the responsibility of Seller pursuant to Section 6.13; or (iii) other Taxes of Seller (or any stockholder or Affiliate of Seller) of any kind or description (including any Liability for Taxes of Seller (or any stockholder or Affiliate of Seller) that becomes a Liability of Buyer under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract or Law);

(c) any Liabilities relating to or arising out of the Excluded Assets;

(d) any Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the operation of the Business or the Purchased Assets to the extent such Action relates to such operation on or prior to the Closing Date;

(e) any product or service Liability or similar claim for injury to a Person or property which arises out of or is based upon any express or implied representation, warranty, agreement or guaranty made by Seller, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package, label or warn of hazards or other related product defects of any products at any time manufactured or sold or any service performed by Seller;

(f) any Liabilities of Seller arising under or in connection with any Benefit Plan providing benefits to any present or former employee of Seller;

(g) any Liabilities of Seller for any present or former employees, officers, directors, retirees, independent contractors or consultants of Seller, including, without limitation, any Liabilities associated with any claims for wages or other benefits, bonuses, accrued vacation, workers' compensation, severance, retention, termination or other payments;

(h) any trade accounts payable of Seller (i) to the extent not accounted for on the Interim Balance Sheet; (ii) which constitute intercompany payables owing to Affiliates of Seller; (iii) which constitute debt, loans or credit facilities to financial institutions and other creditors; or (iv) which did not arise in the ordinary course of business;

(i) any Liabilities of the Business relating or arising from unfulfilled commitments, quotations, purchase orders, customer orders or work orders that (i) do not constitute part of the Purchased Assets issued by the customers of the Business to Seller on or before the Closing; (ii) did not arise in the ordinary course of business; or (iii) are not validly and effectively assigned to Buyer pursuant to this Agreement;

(j) any Liabilities to indemnify, reimburse, or advance amounts to any present or former officer, director, employee or agent of Seller (including with respect to any breach of fiduciary obligations by same), except for indemnification of same pursuant to Section 8.03 as Seller Indemnitees;

(k) any Liabilities under the Excluded Contracts or any other Contracts, including Intellectual Property Agreements, (i) which are not validly and effectively assigned to Buyer pursuant to this Agreement; (ii) which do not conform to the representations and warranties with respect thereto contained in this Agreement; or (iii) to the extent such Liabilities arise out of or relate to a breach by Seller of such Contracts prior to Closing;

(l) any Liabilities associated with debt, loans or credit facilities of Seller and/or the Business owing to financial institutions and other creditors;

(m) any Liabilities arising out of, in respect of or in connection with the failure by Seller or any of its Affiliates to comply with any Law or Governmental Order; and

(n) those Liabilities of Seller set forth on Exhibit D.

Section 2.05 Purchase Price. The aggregate purchase price for the Purchased Assets shall be the sum of the amounts payable pursuant to this Section 2.05 (collectively, the "**Purchase Price**"), subject to adjustment and set-off pursuant to and in accordance with this Agreement, plus the assumption of the Assumed Liabilities.

(a) At the Closing, subject to the further terms and conditions set forth herein, Buyer shall pay to Seller [redacted] (the "**Closing Payment**").

(b) No later than ninety (90) days after the Closing Date or five (5) days after final resolution of the Closing Working Capital in accordance with Section 2.06(a), whichever is later, Buyer shall pay to Seller [redacted] subject to adjustment for the Post-Closing Adjustment Amount as set forth in Section 2.06(a) (the "**Deferred Payment**") by wire transfer of immediately available funds to an account or accounts designated by Seller.

(c) In the event that Buyer elects to consummate the Closing notwithstanding Seller's failure to deliver to Buyer the consent to assign the Contract identified in Exhibit G, Seller shall endeavor to deliver to Buyer such consent after the Closing and, subject to Seller's delivery to Buyer of such consent within one hundred twenty (120) days of the Closing Date, Buyer shall

pay to Seller an additional [redacted] within five (5) days of Buyer's receipt of such consent. For purposes of this Section 2.05(c), a consent to assign the Contract identified in Exhibit G will be deemed delivered upon the occurrence of any of the following: (i) the counterparty to such Contract executes and returns a third party consent, in substantially the form agreed to by Buyer and Seller, or (ii) the counterparty to such Contract otherwise agrees in writing (including by email) to the assignment of such Contract or to continue doing business with Buyer under such Contract. Notwithstanding anything in this Agreement to the contrary, Buyer and Seller shall use commercially reasonable efforts to obtain the consent of the counterparty to such Contract. In seeking the consent to the assignment of such Contract, Buyer shall not seek or suggest any changes to the contractual or business arrangements under such Contract, unless first requested by the counterparty to such Contract. Buyer and Seller shall cooperate and take such actions which may reasonably be required to ensure, insofar as each is reasonably able, that the necessary consent to the assignment of such Contract is obtained, as soon as possible after Closing; provided, however, that Buyer shall not be required to pay any transfer or assignment fee in order to procure such consent.

(d) Seller will be eligible to receive, and Buyer shall be obligated to pay, consideration up to (and not to exceed) an aggregate amount of [redacted] pursuant to and in accordance with the terms and conditions set forth in Exhibit E (the "**Contingent Payment**").

(e) For the avoidance of doubt, if applicable, any Deferred Payment and Contingent Payment made by Buyer pursuant to this Section 2.05 shall be treated for federal income Tax purposes as additional purchase price. The parties hereby agree to file all Tax Returns and Tax informational statements on a basis consistent with such characterization.

(f) Each of Buyer and Seller understand and agree that (i) the contingent right to receive the Contingent Payment shall not be represented by any form of certificate or other instrument, is not guaranteed or secured in any fashion, is not transferable and does not constitute an equity or ownership interest in Buyer, (ii) Seller shall not have any rights as a securityholder of Buyer as a result of the contingent right to receive the Contingent Payment, and (iii) no interest is payable with respect to the Contingent Payment.

(g) Notwithstanding anything to the contrary, nothing set forth in this Section 2.05 shall prevent Buyer or its Affiliates from (i) operating their businesses, including the Business, in their sole discretion and in the best interests of Buyer and its Affiliates, as applicable, or (ii) conducting their businesses, including the Business, in accordance with their sole business judgment and, in connection therewith, making any decision that they determine to be reasonable. Notwithstanding the foregoing, Buyer covenants and agrees that it will not, and will cause its Affiliates not to, take any actions with the primary purpose to avoid, eliminate and/or reduce the Contingent Payment.

Section 2.06 Purchase Price Adjustment.

(a) Within sixty (60) days after the Closing Date, Buyer shall prepare and deliver to Seller a statement setting forth its calculation of Closing Working Capital (the "**Closing Working Capital Statement**"), which Closing Working Capital Statement shall be substantially in the form of Exhibit A and shall be prepared in accordance with GAAP applied using the same

accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Audited Financial Statements for the most recent fiscal year end, subject to the modifications and limitations set forth on Exhibit A.

(i) After receipt of the Closing Working Capital Statement, Seller shall have thirty (30) days (the "**Review Period**") to review the Closing Working Capital Statement. During the Review Period, Seller shall have full access to the relevant books and records of Buyer, the personnel of, and work papers prepared by Buyer, to the extent that they relate to the Closing Working Capital Statement, and to such historical financial information (to the extent in Buyer's possession) relating to the Closing Working Capital Statement as Seller may reasonably request for the purpose of reviewing the Closing Working Capital Statement and to prepare a Statement of Objections (defined below), *provided, that* such access shall be in a manner that does not unreasonably interfere with the normal business operations of Buyer.

(ii) On or prior to the last day of the Review Period, Seller may object to the Closing Working Capital Statement by delivering to Buyer a written statement setting forth Seller's objections in reasonable detail, indicating each disputed item or amount and the basis for Seller's disagreement therewith (the "**Statement of Objections**"). If Seller fails to deliver the Statement of Objections before the expiration of the Review Period, the Closing Working Capital Statement shall be deemed to have been accepted by Seller. If Seller delivers the Statement of Objections before the expiration of the Review Period, Buyer and Seller shall negotiate in good faith to resolve such objections within thirty (30) days after the delivery of the Statement of Objections (the "**Resolution Period**"), and, if the same are so resolved within the Resolution Period, the Closing Working Capital Statement with such changes as may have been previously agreed in writing by Buyer and Seller, shall be final and binding.

(iii) If Seller and Buyer fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute ("**Disputed Amounts**" and any amounts not so disputed, the "**Undisputed Amounts**") shall be submitted for resolution to an impartial nationally recognized firm of independent certified public accountants mutually acceptable to both Seller and Buyer (the "**Independent Accountant**") who, acting as experts and not arbitrators, shall resolve the Disputed Amounts only. The parties hereto agree that all adjustments shall be made without regard to materiality. The Independent Accountant shall only decide the specific items under dispute by the parties and their decision for each Disputed Amount must be within the range of values assigned to each such item in the Closing Working Capital Statement and the Statement of Objections, respectively. The Independent Accountant shall make a determination as soon as practicable within thirty (30) days (or such other time as the parties hereto shall agree in writing) after their engagement, and their resolution of the Disputed Amounts shall be conclusive and binding upon the parties hereto.

(iv) The fees and expenses of the Independent Accountant shall be paid by Seller, on the one hand, and Buyer, on the other hand, based upon the percentage that the amount actually contested but not awarded to Seller or Buyer, respectively, bears to the aggregate amount actually contested by Seller and Buyer.

(v) The "**Post-Closing Adjustment Amount**" shall be an amount equal to the Closing Working Capital as finally determined in accordance with this Section 2.06(a) minus the Target Working Capital. If the Post-Closing Adjustment Amount is a positive number, Buyer shall pay to Seller an amount equal to the Post-Closing Adjustment Amount, which amounts shall be payable along with the Deferred Payment in accordance with Section **2.05**(b). If the Post-Closing Adjustment Amount is a negative number, Buyer may deduct from the amount of the Deferred Payment an amount equal to the Post-Closing Adjustment Amount and payment by Buyer of such reduced amount shall be deemed full satisfaction of Buyer's obligation to make the Deferred Payment pursuant to Section **2.05**(b).

(b) Any payments made pursuant to Section **2.06** shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

Section 2.07 Allocation of Purchase Price. Seller and Buyer agree that the Purchase Price and the Assumed Liabilities (plus other relevant items) shall be allocated among the Purchased Assets for all purposes (including Tax and financial accounting) as shown on the Exhibit F (the "**Allocation Schedule**"). Buyer and Seller shall file all Tax Returns (including amended returns and claims for refund) and information reports in a manner consistent with the Allocation Schedule. Any adjustments to the Purchase Price pursuant to Section **2.06** herein shall be allocated in a manner consistent with the Allocation Schedule.

Section 2.08 Withholding Tax. Buyer shall be entitled to deduct and withhold from the Purchase Price all Taxes that Buyer may be required to deduct and withhold under any provision of Tax Law. All such withheld amounts shall be treated as delivered to Seller hereunder.

Section 2.09 Third Party Consents. To the extent that Seller's rights under any Contract or Permit constituting a Purchased Asset, or any other Purchased Asset, may not be assigned to Buyer without the consent of another Person which has not been obtained at or prior to the Closing, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, and Seller, at its expense, shall use its commercially reasonable efforts to obtain any such required consent(s) as promptly as possible. If any such consent shall not be obtained or if any attempted assignment would be ineffective or would impair Buyer's rights under the Purchased Asset in question so that Buyer would not in effect acquire the benefit of all such rights, Seller, to the maximum extent permitted by Law and the Purchased Asset, shall act after the Closing as Buyer's agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by Law and the Purchased Asset, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer. Notwithstanding any provision in this Section 2.09 to the contrary, Buyer shall not be deemed to have waived its rights under Section 7.01(b) hereof unless and until Buyer either provides written waivers thereof or elects to proceed to consummate the transactions contemplated by this Agreement at Closing.

ARTICLE III
CLOSING

Section 3.01 Closing. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the "**Closing**") shall take

place remotely by exchange of documents and signatures (or their electronic counterparts) on the second (2nd) Business Day after all of the conditions to Closing set forth in ARTICLE **VII** are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), or at such other time, date or place as Seller and Buyer may mutually agree upon in writing. The date on which the Closing is to occur is herein referred to as the "**Closing Date.**"

Section 3.02 Closing Deliverables.

(a) At the Closing, Seller shall deliver to Buyer the following:

(i) a bill of sale and assignment and assumption agreement in form and substance satisfactory to Buyer (the "**Bill of Sale**") and duly executed by Seller, transferring the Tangible Personal Property and Assigned Contracts included in the Purchased Assets to Buyer;

(ii) a restrictive covenant agreement in form and substance satisfactory to Buyer (the "**Restrictive Covenant Agreement**") and duly executed by each of Seller and Ms. Connie Tang, pursuant to which each of Seller and Ms. Connie Tang will agree to non-competition and non-solicitation provisions customary in connection with the sale of a business;

(iii) the Seller Closing Certificate;

(iv) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as Buyer may reasonably request in order to give effect to this Agreement, including evidence that Seller shall have obtained or delivered, as applicable, all consents, notices, and waivers, as applicable, of the other Persons set forth on Exhibit G;

(v) a validly executed IRS Form W-9 Request for Taxpayer Identification Number and Certification from Seller (or to the extent Seller is a disregarded entity for U.S. federal income tax purposes, the owner of Seller for U.S. federal income tax purposes), dated as of the Closing Date; and

(vi) UCC-3 termination statements and other lien terminations or releases (including Intellectual Property security interest releases in form and substance necessary for recordation in the United States Patent and Trademark Office, United States Copyright Office, or any other similar Governmental Authority) evidencing the release or termination of all Encumbrances (other than Permitted Encumbrances) on or secured by the Purchased Assets.

(b) At the Closing, Buyer shall deliver to Seller the following:

(i) the Closing Payment, by wire transfer of immediately available funds to an account designated in writing by Seller to Buyer;

(ii) the Restrictive Covenant Agreement duly executed by Buyer;

(iii) the Bill of Sale duly executed by Buyer;

(iv) the Buyer Closing Certificate; and

(v) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Seller, as Seller may reasonably request in order to give effect to this Agreement.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the correspondingly numbered Section of the Disclosure Schedules, Seller represents and warrants to Buyer that the statements contained in this ARTICLE IV are true and correct as of the date hereof.

Section 4.01 Organization and Qualification of Seller. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of California and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted. Section 4.01 of the Disclosure Schedules sets forth each jurisdiction in which Seller is licensed or qualified to do business, and Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the ownership of the Purchased Assets or the operation of the Business as currently conducted makes such licensing or qualification necessary, except where the failure to be so qualified, licensed or in good standing would not have a Material Adverse Effect.

Section 4.02 Authority of Seller. Seller has full corporate power and authority to enter into this Agreement and the Ancillary Documents to which Seller is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Seller of this Agreement and any Ancillary Document to which Seller is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller, and (assuming due authorization, execution and delivery by Buyer) this Agreement constitutes a legal, valid and binding obligation of Seller enforceable against Seller in accordance with its terms. When each Ancillary Document to which Seller is or will be a party has been duly executed and delivered by Seller (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Seller enforceable against it in accordance with its terms.

Section 4.03 No Conflicts; Consents. The execution, delivery and performance by Seller of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws or other organizational documents of Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the Business or the Purchased Assets; (c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract or Permit to which Seller is a party or by which Seller or the Business is bound or to which any of the

Purchased Assets are subject (including any Assigned Contract); or (d) result in the creation or imposition of any Encumbrance other than Permitted Encumbrances on the Purchased Assets. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Seller in connection with the execution and delivery of this Agreement or any of the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby.

Section 4.04 Financial Statements. Complete copies of the audited financial statements consisting of the balance sheet of the Business as of September 30 in each of the years 2023, 2022, and 2021 and the related statements of operations and changes in stockholders' equity and cash flow for the years then ended (the "**Audited Financial Statements**"), and unaudited financial statements consisting of the balance sheet of the Business as of March 31, 2024 and the related statements of operations for the six-month period then ended (the "**Interim Financial Statements**" and together with the Audited Financial Statements, the "**Financial Statements**") have been delivered to Buyer. Except as set forth on Section **4.04** of the Disclosure Schedules, the Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse) and the absence of notes (that, if presented, would not differ materially from those presented in the Audited Financial Statements). The Financial Statements are based on the books and records of the Business, and fairly present in all material respects the financial condition of the Business as of the respective dates they were prepared and the results of the operations of the Business for the periods indicated. The balance sheet of the Business as of September 30, 2023 is referred to herein as the "**Balance Sheet**" and the date thereof as the "**Balance Sheet Date**" and the balance sheet of the Business as of March 31, 2024 is referred to herein as the "**Interim Balance Sheet**" and the date thereof as the "**Interim Balance Sheet Date.**" Seller maintains a standard system of accounting for the Business established and administered in accordance with GAAP.

Section 4.05 Undisclosed Liabilities. Seller has no Liabilities with respect to the Business, except (a) those which are adequately reflected or reserved against in the Interim Balance Sheet as of the Interim Balance Sheet Date, and (b) those which have been incurred in the ordinary course of business consistent with past practice since the Interim Balance Sheet Date and which are not, individually or in the aggregate, material in amount.

Section 4.06 Absence of Certain Changes, Events and Conditions. Since the Interim Balance Sheet Date, and other than in the ordinary course of business consistent with past practice, there has not been any:

(a) event, occurrence or development that has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) material change in any method of accounting or accounting practice for the Business, except as required by GAAP or as disclosed in Section **4.04** of the Disclosure Schedules;

(c) material change in cash management practices and policies, practices and procedures with respect to collection of Accounts Receivable, establishment of reserves for

uncollectible Accounts Receivable, accrual of Accounts Receivable, inventory control, prepayment of expenses, payment of trade accounts payable, accrual of other expenses, deferral of revenue and acceptance of customer deposits;

(d) incurrence, assumption or guarantee of any indebtedness for borrowed money in connection with the Business except unsecured current obligations and Liabilities incurred in the ordinary course of business consistent with past practice;

(e) transfer, assignment, sale or other disposition of any of the Purchased Assets shown or reflected in the Interim Balance Sheet, except for the sale of Inventory in the ordinary course of business;

(f) cancellation of any debts or claims or amendment, termination or waiver of any rights constituting Purchased Assets;

(g) transfer or assignment of or grant of any license or sublicense under or with respect to any Intellectual Property Assets or Intellectual Property Agreements (except non-exclusive licenses or sublicenses granted in the ordinary course of business consistent with past practice);

(h) abandonment or lapse of or failure to maintain in full force and effect any Intellectual Property Registration, or failure to take or maintain reasonable measures to protect the confidentiality or value of any Trade Secrets included in the Intellectual Property Assets;

(i) material damage, destruction or loss, or any material interruption in use, of any Purchased Assets, whether or not covered by insurance;

(j) acceleration, termination, material modification to or cancellation of any Assigned Contract or Permit;

(k) material capital expenditures which would constitute an Assumed Liability;

(l) imposition of any Encumbrance upon any of the Purchased Assets;

(m) (i) grant of any bonuses, whether monetary or otherwise, or increase in any wages, salary, severance, pension or other compensation or benefits in respect of any current or former employees, officers, directors, independent contractors or consultants of the Business, other than as provided for in any written agreements or required by applicable Law, (ii) change in the terms of employment for any employee of the Business or any termination of any employees for which the aggregate costs and expenses exceed $25,000.00, or (iii) action to accelerate the vesting or payment of any compensation or benefit for any current or former employee, officer, director, consultant or independent contractor of the Business,;

(n) adoption, modification or termination of any: (i) employment, severance, retention or other agreement with any current or former employee, officer, director, independent contractor or consultant of the Business, except in the ordinary course of business consistent with past practice, (ii) Benefit Plan, except in the ordinary course of business consistent with past practice, or (iii) collective bargaining or other agreement with a Union; in each case of (i), (ii),

and (iii), whether written or oral;

(o) any loan to (or forgiveness of any loan to), or entry into any other transaction with, any current or former directors, officers or employees of the Business;

(p) adoption of any plan of merger, consolidation, reorganization, liquidation or dissolution or filing of a petition in bankruptcy under any provisions of federal or state bankruptcy Law or consent to the filing of any bankruptcy petition against it under any similar Law;

(q) purchase, lease or other acquisition of the right to own, use or lease any property or assets in connection with the Business for an amount in excess of $10,000.00, individually (in the case of a lease, per annum) or $10,000.00 in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term), except for purchases of Inventory or supplies in the ordinary course of business consistent with past practice;

(r) any Contract to do any of the foregoing, or any action or omission that would result in any of the foregoing.

Section 4.07 Material Contracts.

(a) Section 4.07(a) of the Disclosure Schedules lists each of the following Contracts (x) by which any of the Purchased Assets are bound or affected or (y) to which Seller is a party or by which it is bound in connection with the Business or the Purchased Assets (such Contracts, together with all Intellectual Property Agreements set forth in Section 4.11(b) of the Disclosure Schedules and all Contracts with the Material Customers and the Material Suppliers, being "**Material Contracts**"):

(i) all Contracts involving aggregate consideration in excess of $50,000.00 and which, in each case, cannot be cancelled without penalty or without more than thirty (30) days' notice;

(ii) all Contracts that require Seller to purchase or sell a stated portion of the requirements or outputs of the Business or that contain "take or pay" provisions;

(iii) all Contracts that relate to the acquisition or disposition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(iv) all broker, distributor, dealer, manufacturer's representative, franchise, agency, sales promotion, market research, marketing consulting and advertising Contracts;

(v) all employment agreements and Contracts with independent contractors or consultants (or similar arrangements) and which are not cancellable without material penalty or without more than thirty (30) days' notice;

(vi) except for Contracts relating to trade receivables, all Contracts relating to indebtedness (including, without limitation, guarantees);

(vii) all Contracts with any Governmental Authority ("**Government Contracts**"), except to the extent such Contract is with a Material Customer or a Material Supplier;

(viii) all Contracts that limit or purport to limit the ability of Seller to compete in any line of business or with any Person or in any geographic area or during any period of time;

(ix) all joint venture, partnership or similar Contracts;

(x) all Contracts for the sale of any of the Purchased Assets or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase any of the Purchased Assets;

(xi) all powers of attorney with respect to the Business or any Purchased Asset;

(xii) all collective bargaining agreements or Contracts with any Union; and

(xiii) all other Contracts that are material to the Purchased Assets or the operation of the Business and not previously disclosed pursuant to this Section **4.07**.

(b) Each Material Contract is valid and binding on Seller in accordance with its terms and is in full force and effect. None of Seller or, to Seller's Knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under) in any material respect, or has provided or received any written notice (or, to Seller's Knowledge, oral notice) of any intention to terminate, any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute an event of default under any Material Contract or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. Complete and correct copies of each Material Contract (including all modifications, amendments and supplements thereto and waivers thereunder) have been made available to Buyer. There are no material disputes pending or, to Seller's Knowledge, threatened under any Contract included in the Purchased Assets.

Section 4.08 Title to Purchased Assets. Seller has good and valid title to, or a valid leasehold interest in, all of the Purchased Assets. All such Purchased Assets (including leasehold interests) are free and clear of Encumbrances except for the following (collectively referred to as "**Permitted Encumbrances**"):

(a) those items set forth in Section **4.08** of the Disclosure Schedules;

(b) liens for Taxes not yet due and payable;

(c) mechanics', carriers', workmen's, repairmen's or other like liens arising or incurred in the ordinary course of business consistent with past practice or amounts that are not delinquent and which are not, individually or in the aggregate, material to the Business or the Purchased Assets;

(d) easements, rights of way, zoning ordinances and other similar encumbrances affecting the Leased Real Property which are not, individually or in the aggregate, material to the Business or the Purchased Assets, which do not prohibit or interfere with the current operation of any Leased Real Property; or

(e) liens arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business consistent with past practice which are not, individually or in the aggregate, material to the Business or the Purchased Assets.

Section 4.09 Condition and Sufficiency of Assets.

(a) Except as set forth in Section **4.09**(a) of the Disclosure Schedules, the buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of Tangible Personal Property included in the Purchased Assets are structurally sound, are in good operating condition and repair (subject to ordinary wear and tear), and are adequate for the uses to which they are being put, and, to Seller's Knowledge, none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

(b) The Purchased Assets are sufficient for the conduct of the Business as of the Closing and constitute all of the rights, property and assets necessary to conduct the Business as of the Closing. None of the Excluded Assets are material to the Business.

Section 4.10 Real Property.

(a) Seller does not own any real property that is used in or necessary for the conduct of the Business.

(b) Section 4.10(**b**) of the Disclosure Schedules sets forth each parcel of real property leased by Seller and used in or necessary for the conduct of the Business as currently conducted (together with all rights, title and interest of Seller in and to leasehold improvements relating thereto, including, but not limited to, security deposits, reserves or prepaid rents paid in connection therewith, collectively, the "**Leased Real Property**"), and a true and complete list of all leases, subleases, licenses, concessions and other agreements (whether written or oral), including all amendments, extensions renewals, guaranties and other agreements with respect thereto, pursuant to which Seller holds any Leased Real Property (collectively, the "**Leases**"). Seller has delivered to Buyer a true and complete copy of each Lease. With respect to each Lease:

(i) such Lease is valid, binding, enforceable and in full force and effect, and Seller enjoys peaceful and undisturbed possession of the Leased Real Property;

(ii) Seller is not in breach or default under such Lease in any material respect, and no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a breach or default, and Seller has paid all rent due and payable under such Lease;

(iii) Seller has not received nor given any written notice (or, to Seller's Knowledge, oral notice) of any default or event that with notice or lapse of time, or both, would constitute a default by Seller under any of the Leases and, to the Knowledge of Seller, no other party is in default thereof, and no party to any Lease has exercised any termination rights with respect thereto;

(iv) Seller has not subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof; and

(v) Seller has not pledged, mortgaged or otherwise granted an Encumbrance on its leasehold interest in any Leased Real Property.

(c) Seller has not received any written notice of (i) violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Leased Real Property, (ii) existing, pending or threatened condemnation proceedings affecting the Leased Real Property, or (iii) existing, pending or threatened zoning, building code or other moratorium proceedings, or similar matters which could reasonably be expected to materially and adversely affect the ability to operate the Leased Real Property as currently operated. Neither the whole nor any material portion of any Leased Real Property has been damaged or destroyed by fire or other casualty.

(d) The Leased Real Property is sufficient for the conduct of the Business as conducted as of the Closing and constitutes all of the real property necessary to conduct the Business as conducted as of the Closing.

Section 4.11 Intellectual Property.

(a) Section 4.11(**a**) of the Disclosure Schedules contains a correct, current and complete list of: (i) all Intellectual Property Registrations, specifying as to each, as applicable: the title, mark, or design; the jurisdiction by or in which it has been issued, registered or filed; the patent, registration or application serial number; the issue, registration or filing date; and the current status; (ii) all unregistered Trademarks included in the Intellectual Property Assets; (iii) all proprietary Software included in the Intellectual Property Assets; and (iv) all social media accounts used by Seller in the conduct of the Business.

(b) Section 4.11(**b**) of the Disclosure Schedules contains a correct, current and complete list of all Intellectual Property Agreements, specifying for each the date, title, and parties thereto, and separately identifying the Intellectual Property Agreements: (i) under which Seller is a licensor or otherwise grants to any Person any right or interest relating to any Intellectual Property Asset; (ii) under which Seller is a licensee or otherwise granted any right or interest relating to the Intellectual Property of any Person; and (iii) which otherwise relate to the Seller's ownership or use of any Intellectual Property in the conduct of the Business as currently conducted or proposed to be conducted. Seller has provided Buyer with true and complete copies (or in the case of any oral agreements, a complete and correct written description) of all such Intellectual Property Agreements, including all modifications, amendments and supplements thereto and waivers thereunder. Each Intellectual Property Agreement is valid and binding on Seller in accordance with its terms and is in full force and effect. Neither Seller nor, to Seller's

Knowledge, any other party thereto is, or is alleged to be, in breach of or default under, or has provided or received any written (or, to Seller's Knowledge, oral) notice of breach of, default under, or intention to terminate (including by non-renewal), any Intellectual Property Agreement.

(c) Except as set forth in Section 4.11(c) of the Disclosure Schedules, Seller is the sole and exclusive legal and beneficial owner of all right, title and interest in and to the Intellectual Property Assets, and has the valid and enforceable right to use all other Intellectual Property used or held for use in or necessary for the conduct of the Business as currently conducted, in each case, free and clear of Encumbrances other than Permitted Encumbrances. The Intellectual Property Assets and Licensed Intellectual Property are all of the Intellectual Property necessary to operate the Business as presently conducted. Seller has provided Buyer with true and complete copies of all such Contracts. All assignments and other instruments necessary to establish, record, and perfect Seller's ownership interest in the Intellectual Property Registrations have been validly executed, delivered, and filed with the relevant Governmental Authorities and authorized registrars.

(d) Neither the execution, delivery, or performance of this Agreement, nor the consummation of the transactions contemplated hereunder, will result in the loss or impairment of or payment of any additional amounts with respect to, or require the consent of any other Person in respect of, the Buyer's right to own or use any Intellectual Property Assets or Licensed Intellectual Property in the conduct of the Business as currently conducted. Immediately following the Closing, all Intellectual Property Assets will be owned or available for use by Buyer on the same terms as they were owned or available for use by Seller immediately prior to the Closing.

(e) All of the Intellectual Property Assets (and Licensed Intellectual Property) are valid and enforceable, and all Intellectual Property Registrations are subsisting and in full force and effect. Seller has taken all commercially reasonable and necessary steps to maintain and enforce the Intellectual Property Assets and Licensed Intellectual Property and to preserve the confidentiality of all Trade Secrets included in the Intellectual Property Assets. All required filings and fees related to the Intellectual Property Registrations have been timely submitted with and paid to the relevant Governmental Authorities and authorized registrars.

(f) The conduct of the Business as currently conducted and formerly conducted, including the use of the Intellectual Property Assets and Licensed Intellectual Property in connection therewith, and the products, processes, and services of the Business have not infringed, misappropriated, or otherwise violated the Intellectual Property or other rights of any Person. To Seller's Knowledge, no Person has infringed, misappropriated, or otherwise violated any Intellectual Property Assets or Licensed Intellectual Property.

(g) There are no Actions (including any opposition, cancellation, revocation, review, or other proceeding), whether settled, pending or, to Seller's Knowledge, threatened (including in the form of offers to obtain a license): (i) alleging any infringement, misappropriation, or other violation of the Intellectual Property of any Person by Seller in the conduct of the Business; (ii) challenging the validity, enforceability, registrability, patentability, or ownership of any Intellectual Property Assets or Licensed Intellectual Property; or (iii) by Seller or any other Person alleging any infringement, misappropriation, or other violation by any Person of any

Intellectual Property Assets. Seller is not aware of any facts or circumstances that could reasonably be expected to give rise to any such Action. Seller is not subject to any outstanding or prospective Governmental Order (including any motion or petition therefor) that does or could reasonably be expected to restrict or impair the use of any Intellectual Property Assets or Licensed Intellectual Property.

(h) All Business IT Systems are in good working condition and are sufficient for the operation of the Business as currently conducted. To Seller's Knowledge, there has been no malfunction, failure, continued substandard performance, denial-of-service, or other cyber incident, including any cyberattack, or other impairment of the Business IT Systems that has resulted or is reasonably likely to result in material disruption or damage to the Business. Seller has taken all commercially reasonable steps to safeguard the confidentiality, availability, security, and integrity of the Business IT Systems, including implementing and maintaining appropriate backup, disaster recovery, and Software and hardware support arrangements.

(i) Seller has complied in all material respects with all applicable Laws and all internal or publicly posted policies, notices, and statements concerning the collection, use, processing, storage, transfer, and security of personal information in the conduct of the Business. Seller has not (i) experienced any actual, alleged, or suspected data breach or other security incident involving personal information in its possession or control or (ii) been subject to or received any written notice of any audit, investigation, complaint, or other Action by any Governmental Authority or other Person concerning the Seller's collection, use, processing, storage, transfer, or protection of personal information or actual, alleged, or suspected violation of any applicable Law concerning privacy, data security, or data breach notification, in each case in connection with the conduct of the Business, and to Seller's Knowledge, there are no facts or circumstances that could reasonably be expected to give rise to any such Action.

Section 4.12 Inventory. All Inventory, whether or not reflected in the Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All Inventory is owned by Seller free and clear of all Encumbrances, and no Inventory is held on a consignment basis. The quantities of each item of Inventory (whether raw materials, work-in-process or finished goods) are not excessive, but are reasonable in the present circumstances of Seller.

Section 4.13 Accounts Receivable. The Accounts Receivable reflected on the Interim Balance Sheet and the Accounts Receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by Seller involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; (b) constitute only valid, undisputed claims of Seller not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice; and (c) subject to a reserve for bad debts shown on the Interim Balance Sheet or, with respect to Accounts Receivable arising after the Interim Balance Sheet Date, on the accounting records of the Business, are, to Seller's Knowledge, collectible in full within ninety (90) days after billing. The reserve for bad debts shown on the Interim Balance Sheet or, with respect to Accounts Receivable arising after the Interim Balance Sheet Date, on the accounting records of the

Business have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

Section 4.14 Customers and Suppliers.

(a) Section 4.14(a) of the Disclosure Schedules sets forth with respect to the Business (i) each customer who has paid aggregate consideration to Seller for goods or services rendered in an amount greater than or equal to $550,000.00 for the most recent fiscal year (collectively, the "**Material Customers**"); and (ii) the amount of consideration paid by each Material Customer during such period. Seller has not received any written notice (or, to Seller's Knowledge, oral notice) and has no reason to believe, that any of the Material Customers has ceased, or intends to cease after the Closing, to use the goods or services of the Business or to otherwise terminate or materially reduce its relationship with the Business.

(b) Section 4.14(b) of the Disclosure Schedules sets forth with respect to the Business (i) each supplier to whom Seller has paid consideration for goods or services rendered in an amount greater than or equal to $550,000.00 for the most recent fiscal year (collectively, the "**Material Suppliers**"); and (ii) the amount of purchases from each Material Supplier during such period. Seller has not received any written notice (or, to Seller's Knowledge, oral notice) and has no reason to believe, that any of the Material Suppliers has ceased, or intends to cease, to supply goods or services to the Business or to otherwise terminate or materially reduce its relationship with the Business.

Section 4.15 Insurance. Section **4.15** of the Disclosure Schedules sets forth (a) a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, fiduciary liability and other casualty and property insurance maintained by Seller or its Affiliates and relating to the Business, the Purchased Assets or the Assumed Liabilities (collectively, the "**Insurance Policies**"); and (b) with respect to the Business, the Purchased Assets or the Assumed Liabilities, a list of all pending claims and the claims history for Seller since January 1, 2021. Except as set forth on Section **4.15** of the Disclosure Schedules, there are no claims related to the Business, the Purchased Assets or the Assumed Liabilities pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. Neither Seller nor any of its Affiliates has received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if not yet due, accrued. All such Insurance Policies (a) are in full force and effect and enforceable in accordance with their terms; (b) are provided by carriers who are financially solvent; and (c) have not been subject to any lapse in coverage. None of Seller or any of its Affiliates is in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts customarily carried by Persons conducting a business similar to the Business and are sufficient for compliance in all material respects with all applicable Laws and Contracts to which Seller is a party or by which it is bound. True and complete copies of the Insurance Policies have been made available to Buyer.

Section 4.16 Legal Proceedings; Governmental Orders.

(a) Except as set forth in Section 4.16(a) of the Disclosure Schedules, there are no Actions pending or, to Seller's Knowledge, threatened against or by Seller (a) relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities; or (b) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. To Seller's Knowledge, no event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(b) Except as set forth in Section 4.16(b) of the Disclosure Schedules, there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Business. Seller is in compliance with the terms of each Governmental Order set forth in Section 4.16(b) of the Disclosure Schedules. No event has occurred or circumstances exist that may constitute or result in (with or without notice or lapse of time) a violation of any such Governmental Order.

Section 4.17 Compliance With Laws; Permits.

(a) Except as set forth in Section 4.17(a) of the Disclosure Schedules, Seller has complied, and is now complying, in all material respects with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets.

(b) All Permits necessary for Seller to conduct the Business as currently conducted or for the ownership and use of the Purchased Assets have been obtained by Seller and are valid and in full force and effect. All fees and charges with respect to such Permits as of the date hereof have been paid in full. Section 4.17(b) of the Disclosure Schedules lists all current Permits issued to Seller which are related to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets, including the names of the Permits and their respective dates of issuance and expiration. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse or limitation of any Permit set forth in Section 4.17(b) of the Disclosure Schedules.

Section 4.18 Employee Benefit Matters.

(a) Section 4.18(a) of the Disclosure Schedules contains a true and complete list of each pension, benefit, retirement, compensation, employment, consulting, profit-sharing, deferred compensation, incentive, bonus, performance award, phantom equity, stock or stock-based, change in control, retention, severance, vacation, paid time off (PTO), medical, vision, dental, disability, welfare, Code Section 125 cafeteria, fringe-benefit and other similar agreement, plan, policy, program or arrangement (and any amendments thereto), in each case whether or not reduced to writing and whether funded or unfunded, including each "employee benefit plan" within the meaning of Section 3(3) of ERISA, whether or not tax-qualified and whether or not subject to ERISA, which is or has been maintained, sponsored, contributed to, or required to be contributed to by Seller for the benefit of any current or former employee, officer, director, retiree, independent contractor or consultant of the Business or any spouse or dependent of such individual, or under which Seller or any of its ERISA Affiliates has or may have any Liability, or with respect to which Buyer or any of its Affiliates would reasonably be expected to have any Liability, contingent or otherwise (as listed on Section 4.18(a) of the Disclosure Schedules, each, a "**Benefit Plan**").

(b) With respect to each Benefit Plan, Seller has made available to Buyer accurate, current and complete copies of each of the following: (i) where the Benefit Plan has been reduced to writing, the plan document together with all amendments; (ii) where the Benefit Plan has not been reduced to writing, a written summary of all material plan terms; (iii) where applicable, copies of any trust agreements or other funding arrangements, custodial agreements, insurance policies and Contracts, administration agreements and similar agreements, and investment management or investment advisory agreements, now in effect or required in the future as a result of the transactions contemplated by this Agreement or otherwise; (iv) copies of any summary plan descriptions, summaries of material modifications, summaries of benefits and coverage, COBRA communications, employee handbooks and any other written communications (or a description of any oral communications) relating to any Benefit Plan; (v) in the case of any Benefit Plan that is intended to be qualified under Section 401(a) of the Code, a copy of the most recent determination, opinion or advisory letter from the Internal Revenue Service and any legal opinions issued thereafter with respect to such Benefit Plan's continued qualification; (vi) in the case of any Benefit Plan for which a Form 5500 must be filed, a copy of the two most recently filed Forms 5500, with all corresponding schedules and financial statements attached; (vii) actuarial valuations and reports related to any Benefit Plans with respect to the most recently completed plan years; (viii) the most recent nondiscrimination tests performed under the Code; and (ix) copies of material notices, letters or other correspondence from the Internal Revenue Service, Department of Labor, Department of Health and Human Services, Pension Benefit Guaranty Corporation or other Governmental Authority relating to the Benefit Plan.

(c) Except as set forth in Section 4.18(c) of the Disclosure Schedules, each Benefit Plan and any related trust (other than any multiemployer plan within the meaning of Section 3(37) of ERISA (each a "**Multiemployer Plan**")) has been established, administered and maintained in accordance with its terms and in compliance with all applicable Laws (including ERISA, the Code, and any applicable local Laws). Each Benefit Plan that is intended to be qualified within the meaning of Section 401(a) of the Code (a "**Qualified Benefit Plan**") is so qualified and received a favorable and current determination letter from the Internal Revenue Service with respect to the most recent five year filing cycle, or with respect to a prototype or volume submitter plan, can rely on an opinion letter from the Internal Revenue Service to the prototype plan or volume submitter plan sponsor, to the effect that such Qualified Benefit Plan is so qualified and that the plan and the trust related thereto are exempt from federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and nothing has occurred that could reasonably be expected to adversely affect the qualified status of any Qualified Benefit Plan. Nothing has occurred with respect to any Benefit Plan that has subjected or could reasonably be expected to subject Seller or any of its ERISA Affiliates or, with respect to any period on or after the Closing Date, Buyer or any of its Affiliates, to a penalty under Section 502 of ERISA or to tax or penalty under Sections 4975 or 4980H of the Code.

No pension plan (other than a Multiemployer Plan) which is subject to minimum funding requirements, including any multiple employer plan, (each a "**Single Employer Plan**") in which employees of the Business or any ERISA Affiliate participate or have participated has an "accumulated funding deficiency," whether or not waived, or is subject to a lien for unpaid contributions under Section 303(k) of ERISA or Section 430(k) of the Code. No Single Employer Plan covering employees of the Business which is a defined benefit plan has an

"adjusted funding target attainment percentage," as defined in Section 436 of the Code, less than 80%. Except as set forth in Section 4.18(**c**) of the Disclosure Schedules, all benefits, contributions and premiums relating to each Benefit Plan have been timely paid in accordance with the terms of such Benefit Plan and all applicable Laws and accounting principles, and all benefits accrued under any unfunded Benefit Plan have been paid, accrued or otherwise adequately reserved to the extent required by, and in accordance with GAAP.

(d) Neither Seller nor any of its ERISA Affiliates has (i) incurred or reasonably expects to incur, either directly or indirectly, any material Liability under Title I or Title IV of ERISA or related provisions of the Code or applicable local Law relating to employee benefit plans; (ii) failed to timely pay premiums to the Pension Benefit Guaranty Corporation; (iii) withdrawn from any Benefit Plan; (iv) engaged in any transaction which would give rise to liability under Section 4069 or Section 4212(c) of ERISA; (v) incurred taxes under Section 4971 of the Code with respect to any Single Employer Plan; or (vi) participated in a multiple employer welfare arrangements (MEWA).

(e) With respect to each Benefit Plan (i) except as set forth in Section 4.18(**e**) of the Disclosure Schedules, no such plan is a Multiemployer Plan, and (A) all contributions required to be paid by Seller or its ERISA Affiliates have been timely paid to the applicable Multiemployer Plan, (B) neither Seller nor any ERISA Affiliate has incurred any withdrawal liability under Title IV of ERISA which remains unsatisfied, and (C) a complete withdrawal from all such Multiemployer Plans at the Closing would not result in any material liability to Seller and no Multiemployer Plan is in critical, endangered or seriously endangered status or has suffered a mass withdrawal; (ii) except as set forth in Section 4.18(**e**) of the Disclosure Schedules, no such plan is a "multiple employer plan" within the meaning of Section 413(c) of the Code or a "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA); (iii) no Action has been initiated by the Pension Benefit Guaranty Corporation to terminate any such plan or to appoint a trustee for any such plan; (iv) no such plan or the plan of any ERISA Affiliate maintained or contributed to within the last six (6) years is a Single Employer Plan subject to Title IV of ERISA; and (v) no "reportable event," as defined in Section 4043 of ERISA, with respect to which the reporting requirement has not been waived, has occurred with respect to any such plan.

(f) Except as set forth in Section 4.18(**f**) of the Disclosure Schedules and other than as required under Sections 601 to 608 of ERISA or other applicable Law, no Benefit Plan or other arrangement provides post-termination or retiree health benefits to any individual for any reason.

(g) Except as set forth in Section 4.18(**g**) of the Disclosure Schedules, there is no pending or, to Seller's Knowledge, threatened Action relating to a Benefit Plan (other than routine claims for benefits), and no Benefit Plan has since January 1, 2021 been the subject of an examination or audit by a Governmental Authority or the subject of an application or filing under, or is a participant in, an amnesty, voluntary compliance, self-correction or similar program sponsored by any Governmental Authority.

(h) There has been no amendment to, announcement by Seller or any of its Affiliates relating to, or change in employee participation or coverage under, any Benefit Plan or collective

bargaining agreement that would increase the annual expense of maintaining such plan above the level of the expense incurred for the most recently completed fiscal year (other than on a de minimis basis) with respect to any director, officer, employee, consultant or independent contractor of the Business, as applicable. Neither Seller nor any of its Affiliates has any commitment or obligation or has made any representations to any director, officer, employee, consultant or independent contractor of the Business, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan or any collective bargaining agreement.

(i) Each Benefit Plan that is subject to Section 409A of the Code has been administered in compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including, notices, rulings and proposed and final regulations) thereunder. Seller does not have any obligation to gross up, indemnify or otherwise reimburse any individual for any excise taxes, interest or penalties incurred pursuant to Section 409A of the Code.

(j) Except as set forth in Section 4.18(j) of the Disclosure Schedules, neither the execution of this Agreement nor any of the transactions contemplated by this Agreement will (either alone or upon the occurrence of any additional or subsequent events): (i) entitle any current or former director, officer, employee, independent contractor or consultant of the Business to severance pay or any other payment; (ii) accelerate the time of payment, funding or vesting, or increase the amount of compensation (including stock-based compensation) due to any such individual; (iii) increase the amount payable under or result in any other material obligation pursuant to any Benefit Plan; (iv) result in "excess parachute payments" within the meaning of Section 280G(b) of the Code; or (v) require a "gross-up" or other payment to any "disqualified individual" within the meaning of Section 280G(c) of the Code. Seller has made available to Buyer true and complete copies of any Section 280G calculations prepared (whether or not final) with respect to any disqualified individual in connection with the transactions.

Section 4.19 Employment Matters.

(a) Section 4.19(a) of the Disclosure Schedules contains a list of all persons who are employees, independent contractors or consultants of the Business as of the date hereof, including any employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full-time or part-time); (iii) hire or retention date; (iv) current annual base compensation rate or Contract fee; (v) commission, bonus or other incentive-based compensation; and (vi) a description of the fringe benefits provided to each such individual as of the date hereof. Except as set forth in Section 4.19(a) of the Disclosure Schedules, as of the date hereof, all compensation, including wages, commissions, bonuses, fees and other compensation, payable to all employees, independent contractors or consultants of the Business for services performed on or prior to the date hereof have been paid in full and there are no outstanding agreements, understandings or commitments of Seller with respect to any compensation, commissions, bonuses or fees.

(b) Seller is not, and has not since January 1, 2021 been, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, "**Union**"), and there is not, and has not since January 1, 2021

been, any Union representing or purporting to represent any employee of Seller, and, to Seller's Knowledge, no Union or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. Except as set forth in Section 4.19(b) of the Disclosure Schedules, there has never been, nor has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar labor disruption or dispute affecting Seller or any employees of the Business. Seller has no duty to bargain with any Union.

(c) Seller is and has been in compliance in all material respects with all applicable Laws pertaining to employment and employment practices to the extent they relate to employees, volunteers, interns, consultants and independent contractors of the Business, including all Laws relating to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave and unemployment insurance. All individuals characterized and treated by Seller as consultants or independent contractors of the Business are properly treated as independent contractors under all applicable Laws. All employees of the Business classified as exempt under the Fair Labor Standards Act and state and local wage and hour Laws are properly classified. Seller is in compliance with and has complied in all material respects with all immigration Laws, including Form I-9 requirements and any applicable mandatory E-Verify obligations. Except as set forth in Section 4.19(c), there are no Actions against Seller pending, or to the Seller's Knowledge, threatened to be brought or filed, by or with any Governmental Authority or arbitrator in connection with the employment of any current or former applicant, employee, consultant, volunteer, intern or independent contractor of the Business, including, without limitation, any charge, investigation or claim relating to unfair labor practices, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, employee classification, child labor, hiring, promotion and termination of employees, working conditions, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave, unemployment insurance or any other employment related matter arising under applicable Laws.

(d) Seller has complied with the WARN Act and it has no plans to undertake any action in the future that would trigger the WARN Act.

(e) With respect to each Government Contract, Seller is and has been in compliance in all material respects with Executive Order No. 11246 of 1965 ("E.O. 11246"), Section 503 of the Rehabilitation Act of 1973 ("Section 503") and the Vietnam Era Veterans' Readjustment Assistance Act of 1974 ("VEVRAA"), including all implementing regulations. Seller maintains and complies in all material respects with affirmative action plans in compliance with E.O. 11246, Section 503 and VEVRAA, including all implementing regulations. Seller is not, and has not since January 1, 2021 been, the subject of any audit, investigation or enforcement action by any Governmental Authority in connection with any Government Contract or related compliance with E.O. 11246, Section 503 or VEVRAA. Seller has not been debarred, suspended or otherwise made ineligible from doing business with the United States government or any government contractor.

Section 4.20 Taxes. Except as set forth in Section 4.20 of the Disclosure Schedules:

(a) All Tax Returns required to be filed by Seller for any Pre-Closing Tax Period have been, or will be, timely filed. Such Tax Returns are, or will be, true, complete and correct in all respects. All Taxes due and owing by Seller (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) Seller has withheld and paid each Tax required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, customer, shareholder or other party, and complied with all information reporting and backup withholding provisions of applicable Law.

(c) No extensions or waivers of statutes of limitations have been given or requested with respect to any Taxes of Seller.

(d) All deficiencies asserted, or assessments made, against Seller as a result of any examinations by any taxing authority have been fully paid.

(e) Seller is not a party to any Action by any taxing authority. There are no pending or, to Seller's Knowledge, threatened Actions by any taxing authority.

(f) There are no Encumbrances for Taxes upon any of the Purchased Assets nor is any taxing authority in the process of imposing any Encumbrances for Taxes on any of the Purchased Assets (other than for current Taxes not yet due and payable).

(g) Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

(h) Seller is not, and has not been, a party to, or a promoter of, a "reportable transaction" within the meaning of Section 6707A(c)(1) of the Code and Treasury Regulations Section 1.6011 4(b).

(i) None of the Purchased Assets is (i) required to be treated as being owned by another person pursuant to the so-called "safe harbor lease" provisions of former Section 168(f)(8) of the Internal Revenue Code of 1954, as amended, (ii) subject to Section 168(g)(1)(A) of the Code, or (iii) subject to a disqualified leaseback or long-term agreement as defined in Section 467 of the Code.

(j) None of the Purchased Assets is tax-exempt use property within the meaning of Section 168(h) of the Code.

Section 4.21 Brokers. Except for IT ExchangeNet, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Seller.

Section 4.22 No Other Representations or Warranties. Except for the representations and warranties contained in this ARTICLE IV (to the extent qualified by the Disclosure Schedules),

Seller does not make any other express or implied representation or warranty with respect to Seller, the Purchased Assets or the Business, and Seller disclaims any other representations or warranties, whether made by Seller or any of its officers, directors, managers, employees, agents or representatives and if made, such representation or warranty may not be relied upon by Buyer. Except for the representations and warranties contained in this ARTICLE IV (to the extent qualified by the disclosure schedules) (a) Seller hereby disclaims all liability and responsibility for any representation, warranty, opinion, projection, forecast, statement, memorandum, presentation, advice or information made, communicated, or furnished (orally or in writing) to Buyer or its Affiliates or Representatives (including any opinion, projection, forecast, statement, memorandum, presentation, advice or information that may have been or may be provided to Buyer by any manager, officer, employee, agent, consultant or Representative of Seller or any of its Affiliates, including any information made available in any virtual or physical data room) and (b) Seller does not make any representations or warranties to Buyer regarding the probable success or profitability of the Business conducted by Seller.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller that the statements contained in this ARTICLE V are true and correct as of the date hereof.

Section 5.01 Organization of Buyer. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on its business as currently conducted, except where the failure to be so qualified, licensed or in good standing would not have a material adverse effect on the ability of Buyer to consummate the transactions contemplated hereby on a timely basis.

Section 5.02 Authority of Buyer. Buyer has full limited liability company power and authority to enter into this Agreement and the Ancillary Documents to which Buyer is a party, to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and any Ancillary Document to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms. When each Ancillary Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms.

Section 5.03 No Conflicts; Consents. The execution, delivery and performance by Buyer of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, by-laws

or other organizational documents of Buyer; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that, with or without notice or lapse of time or both, would constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel any Contract to which Buyer is a party. No consent, approval, Permit, Governmental Order, declaration or filing with, or notice to, any Governmental Authority is required by or with respect to Buyer in connection with the execution and delivery of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby.

Section 5.04 Legal Proceedings. There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer or any Affiliate of Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

Section 5.05 Brokers. No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Buyer.

Section 5.06 Financial Capacity; No Financing Condition. Buyer will have at the Closing Date available to it funds sufficient to pay the Closing Payment, and all other amounts incurred or otherwise payable or that may become payable by Buyer in connection with the transactions contemplated by this Agreement. Buyer understands that its obligations to effect the transactions contemplated by this Agreement are not subject to the availability to Buyer of financing of any nature whatsoever. Buyer is not entering into the transactions contemplated by this Agreement with the actual intent to hinder, delay or defraud any present or future creditors of Buyer or any of its Affiliates. Buyer is solvent as of the date of this Agreement and will be solvent as of immediately following the Closing.

ARTICLE VI
COVENANTS

Section 6.01 Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), Seller shall (x) conduct the Business in the ordinary course of business consistent with past practice; and (y) use commercially reasonable efforts to maintain and preserve intact its current Business organization, operations and franchise and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having relationships with the Business. Without limiting the foregoing, from the date hereof until the Closing Date, Seller shall:

(a) preserve and maintain all Permits required for the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets;

(b) pay the debts, Taxes and other obligations of the Business when due;

(c) continue to collect Accounts Receivable in a manner consistent with past practice, without discounting such Accounts Receivable;

(d) maintain the properties and assets included in the Purchased Assets in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear;

(e) continue in full force and effect without modification all Insurance Policies, except as required by applicable Law;

(f) defend and protect the properties and assets included in the Purchased Assets from infringement or usurpation;

(g) perform all of its obligations under all Assigned Contracts;

(h) maintain the Books and Records in accordance with past practice;

(i) comply in all material respects with all Laws applicable to the conduct of the Business or the ownership and use of the Purchased Assets; and

(j) not take or permit any action that would cause any of the changes, events or conditions described in Section **4.06** to occur.

Section 6.02 Access to Information. From the date hereof until the Closing, Seller shall (a) afford Buyer and its Representatives reasonable access to and the right to inspect all of the Leased Real Property, properties, assets, premises, Books and Records, Contracts and other documents and data related to the Business; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Business as Buyer or any of its Representatives may reasonably request; and (c) instruct the Representatives of Seller to cooperate with Buyer in its investigation of the Business. Any investigation pursuant to this Section **6.02** shall be conducted in such manner as not to interfere unreasonably with the conduct of the Business or any other businesses of Seller. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement.

Section 6.03 No Solicitation of Other Bids.

(a) Seller shall not, and shall not authorize or permit any of its Affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal. Seller shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Acquisition Proposal. For purposes hereof, "**Acquisition Proposal**" means any inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or any portion of the Business or the Purchased Assets.

(b) In addition to the other obligations under this Section 6.03, Seller shall promptly (and in any event within three (3) Business Days after receipt thereof by Seller or its Representatives) advise Buyer orally and in writing of any Acquisition Proposal, any request for information with respect to any Acquisition Proposal, or any inquiry with respect to or which could reasonably be expected to result in an Acquisition Proposal, the material terms and conditions of such request, Acquisition Proposal or inquiry, and the identity of the Person making the same.

(c) Seller agrees that the rights and remedies for noncompliance with this Section 6.03 shall include having such provision specifically enforced by any court having equity jurisdiction, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

Section 6.04 Notice of Certain Events.

(a) From the date hereof until the Closing, Seller shall promptly notify Buyer in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Seller hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 7.02 to be satisfied;

(ii) any written notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any written notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(iv) any Actions commenced or, to Seller's Knowledge, threatened against, relating to or involving or otherwise affecting the Business, the Purchased Assets or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.16 or that relates to the consummation of the transactions contemplated by this Agreement.

(b) Buyer's receipt of information pursuant to this Section 6.04 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement (including Section 8.02 and Section 9.01(b)) and shall not be deemed to amend or supplement the Disclosure Schedules.

Section 6.05 Employees and Employee Benefits.

(a) Commencing on the Closing Date, Seller shall terminate all employees of the Business who are actively at work on the Closing Date other than Smruti A. Chavan, who will

remain on Seller payroll until the earlier of (i) the date that is 30 days after the Closing Date or (ii) the date that it is mutually agreed by Seller and Buyer that such Person will become an employee of Buyer. Buyer may, at Buyer's sole discretion, offer employment, on an "at will" basis, to any or all of such terminated employees. Seller shall bear any and all obligations and liability under the WARN Act resulting from employment losses pursuant to this Section **6.05**.

(b) Seller shall be solely responsible, and Buyer shall have no obligations whatsoever for, any compensation or other amounts payable to any current or former employee, officer, director, independent contractor or consultant of the Business, including, without limitation, hourly pay, commission, bonus, salary, accrued vacation, fringe, pension or profit sharing benefits or severance pay for any period relating to the service with Seller at any time on or prior to the Closing Date and Seller shall pay all such amounts to all entitled persons on or prior to the Closing Date.

(c) Seller shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health accident or disability benefits brought by or in respect of current or former employees, officers, directors, independent contractors or consultants of the Business or the spouses, dependents or beneficiaries thereof, which claims relate to events occurring on or prior to the Closing Date. Seller also shall remain solely responsible for all worker's compensation claims of any current or former employees, officers, directors, independent contractors or consultants of the Business which relate to events occurring on or prior to the Closing Date. Seller shall pay, or cause to be paid, all such amounts to the appropriate persons as and when due.

(d) Effective as soon as practicable following the Closing Date, Seller, or any applicable Affiliate, shall effect a transfer of assets and liabilities (including outstanding loans) from the defined contribution retirement plan that it maintains, to the defined contribution retirement plan maintained by Buyer, with respect to those employees of the Business who become employed by Buyer, or an Affiliate of Buyer, in connection with the transactions contemplated by this Agreement. Any such transfer shall be in an amount sufficient to satisfy Section 414(l) of the Code.

(e) Each employee of the Business who becomes employed by Buyer in connection with the transactions contemplated by this Agreement shall be eligible to receive the salary and benefits maintained for employees of Buyer on substantially similar terms and conditions in the aggregate as are provided to similarly situated employees of Buyer.

(f) Each employee of the Business who becomes employed by Buyer in connection with the transaction shall be given service credit for the purpose of eligibility under the group health plan and eligibility and vesting only under the defined contribution retirement plan for his or her period of service with the Seller prior to the Closing Date; *provided, however*, that (i) such credit shall be given pursuant to payroll or plan records, at the election of Buyer, in its sole and absolute discretion; and (ii) such service crediting shall be permitted and consistent with Buyer's defined contribution retirement plan.

(g) Notwithstanding anything in this Agreement to the contrary, Buyer will reimburse Seller for any and all costs and expenses incurred by Seller based upon, arising out of, with

respect to or by reason of Seller's continued employment of Smruti A. Chavan pursuant to Section 6.05(a). Such reimbursement will be paid to Seller, by wire transfer of immediately available funds to an account or accounts designated by Seller, within five days after Buyer's receipt of written notice of such costs and expenses from Seller.

Section 6.06 Confidentiality. From and after the Closing, Seller shall, and shall cause its Affiliates to, hold, and shall use its commercially reasonable efforts to cause its or their respective Representatives to hold, in confidence any and all information, whether written or oral, concerning the Business, except to the extent that Seller can show that such information (a) is generally available to and known by the public through no fault of Seller, any of its Affiliates or their respective Representatives; or (b) is lawfully acquired by Seller, any of its Affiliates or their respective Representatives from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation. If Seller or any of its Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, Seller shall, to the extent legally permitted, promptly notify Buyer in writing and shall disclose only that portion of such information which Seller is advised by its counsel in writing is legally required to be disclosed, *provided that* Seller shall use commercially reasonable efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

Section 6.07 Governmental Approvals and Consents.

(a) Each party hereto shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions required under any Law applicable to such party or any of its Affiliates; and (ii) use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement and the Ancillary Documents, if any. Each party shall cooperate fully with the other party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The parties hereto shall not willfully take any action that will have the effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) Seller shall use commercially reasonable efforts to give all notices to, and obtain all consents from, all third parties that are described in Section 4.03 of the Disclosure Schedules.

(c) Without limiting the generality of the parties' undertakings pursuant to subsections (a) and (b) above, each of the parties hereto shall use commercially reasonable efforts to (i) respond to any inquiries by any Governmental Authority regarding antitrust or other matters with respect to the transactions contemplated by this Agreement or any Ancillary Document; (ii) avoid the imposition of any order or the taking of any action that would restrain, alter or enjoin the transactions contemplated by this Agreement or any Ancillary Document; and (iii) in the event any Governmental Order adversely affecting the ability of the parties to consummate the transactions contemplated by this Agreement or any Ancillary Document has been issued, to have such Governmental Order vacated or lifted.

(d) All analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals made by or on behalf of either party before any Governmental Authority or the staff or regulators of any Governmental Authority, in connection with the transactions contemplated hereunder (but, for the avoidance of doubt, not including any interactions between Seller or Buyer with Governmental Authorities in the ordinary course of business, any disclosure which is not permitted by Law or any disclosure containing confidential information) shall be disclosed to the other party hereunder in advance of any filing, submission or attendance, it being the intent that the parties will consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, meetings, discussions, presentations, memoranda, briefs, filings, arguments, and proposals. Each party shall give notice to the other party with respect to any meeting, discussion, appearance or contact with any Governmental Authority or the staff or regulators of any Governmental Authority, with such notice being sufficient to provide the other party with the opportunity to attend and participate in such meeting, discussion, appearance or contact.

(e) Notwithstanding the foregoing, nothing in this Section **6.07** shall require, or be construed to require, Buyer or any of its Affiliates to agree to (i) sell, hold, divest, discontinue or limit, before or after the Closing Date, any assets, businesses or interests of Buyer or any of its Affiliates; (ii) any conditions relating to, or changes or restrictions in, the operations of any such assets, businesses or interests which, in either case, could reasonably be expected to result in a Material Adverse Effect or materially and adversely impact the economic or business benefits to Buyer of the transactions contemplated by this Agreement and the Ancillary Documents; or (iii) any material modification or waiver of the terms and conditions of this Agreement.

Section 6.08 Books and Records.

(a) In order to facilitate the resolution of any claims made against or incurred by Seller prior to the Closing, or for any other reasonable purpose, for a period of five (5) years after the Closing, Buyer shall (i) retain the Books and Records (including personnel files) relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of Seller; and (ii) upon reasonable notice, afford the Seller's Representatives reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours, to such Books and Records.

(b) In order to facilitate the resolution of any claims made by or against or incurred by Buyer after the Closing, or for any other reasonable purpose, for a period of five (5) years following the Closing, Seller shall (i) retain the books and records (including personnel files) of Seller which relate to the Business and its operations for periods prior to the Closing; and (ii) upon reasonable notice, afford the Buyer's Representatives reasonable access (including the right to make, at Buyer's expense, photocopies), during normal business hours, to such books and records.

(c) Neither Buyer nor Seller shall be obligated to provide the other party with access to any books or records (including personnel files) pursuant to this Section **6.08** where such access would violate any Law.

Section 6.09 Closing Conditions From the date hereof until the Closing, each party hereto

shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in ARTICLE VII hereof.

Section 6.10 Public Announcements. Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), no party to this Agreement shall make any public announcements in respect of this Agreement or the transactions contemplated hereby or otherwise communicate with any news media without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed), and the parties shall cooperate as to the timing and contents of any such announcement.

Section 6.11 Bulk Sales Laws. The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer; it being understood that any Liabilities arising out of the failure of Seller to comply with the requirements and provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction which would not otherwise constitute Assumed Liabilities shall be treated as Excluded Liabilities.

Section 6.12 Receivables. From and after the Closing, if Seller or any of its Affiliates receives or collects any funds relating to any Accounts Receivable or any other Purchased Asset, Seller or its Affiliate shall remit such funds to Buyer within five (5) Business Days after its receipt thereof. From and after the Closing, if Buyer or any of its Affiliates receives or collects any funds relating to any Excluded Asset, Buyer or its Affiliate shall remit any such funds to Seller within five (5) Business Days after its receipt thereof.

Section 6.13 Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the Ancillary Documents (including any real property transfer Tax and any other similar Tax) shall be borne and paid by Seller when due. Seller shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

Section 6.14 Tax Clearance Certificates. If reasonably requested by Buyer, Seller shall notify all of the taxing authorities in the states where Seller is required by Law to file Tax Returns of the transactions contemplated by this Agreement in the form and manner required by such state taxing authorities, only if the failure to make such notifications or receive any available tax clearance certificate (a "**Tax Clearance Certificate**") would subject the Buyer to any Taxes of Seller. If any such state taxing authority asserts that Seller is liable for any Tax, Seller shall promptly pay any and all such amounts and shall provide evidence to the Buyer that such Taxes have been paid in full or otherwise satisfied.

Section 6.15 Further Assurances. Following the Closing, each of the parties hereto shall, and shall cause their respective Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the Ancillary Documents.

Section 6.16 Use of Names. Within ten (10) Business Days of the Closing Date, the Seller will

file, and provide filed copies to the Buyer, such documentation necessary to abandon its use of the names *(1) Computerland, (2) Computerland of Almaden, (3) Computerland of San Jose, (4) Computerland of Silicon Valley, and (5) Menlo Event Services* as d/b/a with the County Clerk for Santa Clara County and Secretary of State for the State of Colorado, as applicable. Without limiting the Seller's obligations pursuant to the Restrictive Covenant Agreement, the Seller hereby agrees, from and after the Closing Date, not to use (or grant to any third party a license to use) any such name or any other similar name.

ARTICLE VII
CONDITIONS TO CLOSING

Section 7.01 Conditions to Obligations of All Parties. The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Governmental Order which is in effect and has the effect of making the transactions contemplated by this Agreement illegal, otherwise restraining or prohibiting consummation of such transactions or causing any of the transactions contemplated hereunder to be rescinded following completion thereof.

(b) All approvals, consents and waivers that are listed on Section **4.03** of the Disclosure Schedules shall have been received and executed counterparts thereof shall have been delivered to Buyer at or prior to the Closing.

(c) No Action shall have been commenced against Buyer or Seller, which would prevent the Closing. No injunction or restraining order shall have been issued by any Governmental Authority, and be in effect, which restrains or prohibits any transaction contemplated hereby.

Section 7.02 Conditions to Obligations of Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Seller contained in Section **4.01**, Section **4.02**, Section **4.04**, Section **4.08**, Section 4.09(b), Section 4.20, and Section **4.21**, the representations and warranties of Seller contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Seller contained in Section **4.01**, Section **4.02**, Section **4.04**, Section **4.08**, Section 4.09(b), Section 4.20, and Section **4.21** shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of

such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; *provided, that*, with respect to agreements, covenants and conditions that are qualified by materiality, Seller shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) From the date of this Agreement, there shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

(d) Seller shall have delivered to Buyer duly executed counterparts to the Ancillary Documents and such other documents and deliveries set forth in Section 3.02(**a**).

(e) Buyer shall have received all Permits that are necessary for it to conduct the Business as conducted by Seller as of the Closing Date.

(f) All Encumbrances relating to the Purchased Assets shall have been released, or will be released at Closing, in full, other than Permitted Encumbrances, and Seller shall have delivered to Buyer written evidence, in form satisfactory to Buyer in its sole discretion, of the release of such Encumbrances.

(g) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller (the "**Seller Closing Certificate**"), certifying:

(i) that each of the conditions set forth in Section 7.02(**a**) and Section 7.02(**b**) have been satisfied;

(ii) that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby; and

(iii) the names and signatures of the officers of Seller authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder.

(h) Seller shall have delivered to Buyer such other documents or instruments as Buyer reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

Section 7.03 Conditions to Obligations of Seller. The obligations of Seller to consummate the

transactions contemplated by this Agreement shall be subject to the fulfillment or Seller's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Buyer contained in Section **5.01** Section **5.02** and Section 5.05, the representations and warranties of Buyer contained in this Agreement, the Ancillary Documents and any certificate or other writing delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Buyer contained in Section **5.01**, Section **5.02** and Section 5.05 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; *provided, that*, with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) Buyer shall have delivered to Seller duly executed counterparts to the Ancillary Documents and such other documents and deliveries set forth in Section 3.02(**b**).

(d) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer (the "**Buyer Closing Certificate**"), certifying:

(i) that each of the conditions set forth in Section 7.03(**a**) and Section 7.03(**b**) have been satisfied;

(ii) that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby; and

(iii) the names and signatures of the officers of Buyer authorized to sign this Agreement, the Ancillary Documents and the other documents to be delivered hereunder and thereunder.

(e) Buyer shall have delivered to Seller such other documents or instruments as Seller reasonably requests and are reasonably necessary to consummate the transactions contemplated by this Agreement.

ARTICLE VIII

INDEMNIFICATION

Section 8.01 Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months from the Closing Date; *provided, that* the representations and warranties in (i) Section **4.01**, Section **4.02**, Section **4.08**, Section 4.09(b), Section **4.21**, Section **5.01**, Section **5.02** and Section 5.05 shall survive indefinitely and (ii) Section **4.18** and Section **4.20** shall survive for the full period of all applicable statutes of limitations (giving effect to any waiver, mitigation or extension thereof) plus sixty (60) days. All covenants and agreements of the parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

Section 8.02 Indemnification By Seller. Subject to the other terms and conditions of this ARTICLE VIII, Seller shall indemnify and defend each of Buyer and its Affiliates and their respective Representatives (collectively, the "**Buyer Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Buyer Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Seller contained in this Agreement, the Ancillary Documents or in any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Seller pursuant to this Agreement, the Ancillary Documents or any certificate or instrument delivered by or on behalf of Seller pursuant to this Agreement;

(c) any Excluded Asset or any Excluded Liability; or

(d) any Third Party Claim based upon, resulting from or arising out of the business, operations, properties, assets or obligations of Seller or any of its Affiliates (other than the Purchased Assets or Assumed Liabilities) conducted, existing or arising on or prior to the Closing Date.

Section 8.03 Indemnification By Buyer. Subject to the other terms and conditions of this ARTICLE VIII, Buyer shall indemnify and defend each of Seller and its Affiliates and their respective Representatives (collectively, the "**Seller Indemnitees**") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Seller Indemnitees based upon, arising out of, with respect to or by reason of:

(a) any inaccuracy in or breach of any of the representations or warranties of Buyer contained in this Agreement, the Ancillary Documents or in any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement, as of the date such representation or warranty was made or as if such representation or warranty was made on and as of the Closing Date (except for representations and warranties that expressly relate to a specified date, the inaccuracy in or breach of which will be determined with reference to such specified date);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Buyer pursuant to this Agreement, the Ancillary Documents or any certificate or instrument delivered by or on behalf of Buyer pursuant to this Agreement;

(c) any Assumed Liability; or

(d) the continued employment of Smruti A. Chavan pursuant to Section 6.05(a).

Section 8.04 Certain Limitations. The indemnification provided for in Section **8.02** and Section **8.03** shall be subject to the following limitations:

(a) Seller shall not be liable to the Buyer Indemnitees for indemnification under Section 8.02(**a**) until the aggregate amount of all Losses in respect of indemnification under Section 8.02(**a**) exceeds $40,000.00 (the "**Basket**"), at which point Seller will only be liable for Losses in excess of the Basket. The aggregate amount of all Losses for which Seller shall be liable pursuant to Section 8.02(**a**) shall not exceed $800,000.00 (the "**Cap**").

(b) Buyer shall not be liable to the Seller Indemnitees for indemnification under Section 8.03(**a**) until the aggregate amount of all Losses in respect of indemnification under Section 8.03(**a**) exceeds the Basket, in which event Buyer will only be liable for Losses in excess of the Basket. The aggregate amount of all Losses for which Buyer shall be liable pursuant to Section 8.03(**a**) shall not exceed the Cap.

(c) Notwithstanding the foregoing, the limitations set forth in Section 8.04(**a**) and Section 8.04(**b**) shall not apply to Losses based upon, arising out of, with respect to or by reason of any inaccuracy in or breach of any representation or warranty in Section **4.01**, Section **4.02**, Section **4.08**, Section 4.09(b), Section **4.18** , Section **4.20**, Section **4.21**, Section **5.01**, Section 5.02, and Section 5.05.

(d) For purposes of calculating the amount of Losses recoverable under this ARTICLE **VIII** as a result of an inaccuracy or breach of any representation or warranty set forth in this Agreement (but not for purposes of determining whether an inaccuracy or breach of a representation or warranty has occurred), all materiality, Material Adverse Effect or similar qualifications contained in such representation or warranty will be disregarded.

(e) The amount of Losses to be paid by an Indemnifying Party pursuant to Section 8.02 and Section **8.03** will be calculated net of any insurance proceeds and any indemnity, contribution or other similar payment actually received by the Indemnified Party in connection with such Losses. For the avoidance of doubt, the foregoing shall not require an Indemnified Party to commence any claim, dispute or litigation against any third parties.

(f) Each Indemnified Party will take, and will cause its Affiliates to take, all commercially reasonable efforts to mitigate any Losses upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise thereto. Notwithstanding the foregoing, such obligation to mitigate any Losses will not require an Indemnified Party to commence any claim, dispute or litigation against any third parties.

Section 8.05 Indemnification Procedures. The party making a claim under this ARTICLE VIII is referred to as the "**Indemnified Party**", and the party against whom such claims are asserted under this ARTICLE VIII is referred to as the "**Indemnifying Party**".

(a) If any Indemnified Party receives notice of the assertion or commencement of any Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a "**Third Party Claim**") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement, the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after receipt of such notice of such Third Party Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to assume the defense of any Third Party Claim at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense; *provided, that* if the Indemnifying Party is Seller, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Business, or (y) seeks an injunction or other equitable relief against the Indemnified Party. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 8.05(**b**), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any such Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party, *provided, that* if in the reasonable opinion of counsel to the Indemnified Party, (A) there are legal defenses available to an Indemnified Party that are different from or additional to those available to the Indemnifying Party; or (B) there exists a conflict of interest between the Indemnifying Party and the Indemnified Party that cannot be waived, the Indemnifying Party shall be liable for the reasonable fees and expenses of counsel to the Indemnified Party in each jurisdiction for which the Indemnified Party determines counsel is required. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may, subject to Section 8.05(**b**), pay, compromise, defend such Third Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third Party Claim. Seller and Buyer shall cooperate

with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available (subject to the provisions of Section **6.06**) records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(b) Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party (which consent will not be unreasonably withheld, conditioned or delayed), except as provided in this Section 8.05(**b**). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party and provides, in customary form, for the unconditional release of each Indemnified Party from all Liabilities and obligations in connection with such Third Party Claim and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such notice, the Indemnified Party may continue to contest or defend such Third Party Claim and in such event, the maximum liability of the Indemnifying Party as to such Third Party Claim shall not exceed the amount of such settlement offer. If the Indemnified Party fails to consent to such firm offer and also fails to assume defense of such Third Party Claim, the Indemnifying Party may settle the Third Party Claim upon the terms set forth in such firm offer to settle such Third Party Claim. If the Indemnified Party has assumed the defense pursuant to Section 8.05(**a**), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).

(c) Any Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "**Direct Claim**") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party forfeits rights or defenses by reason of such failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Indemnified Party's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have rejected such claim, in which case the Indemnified Party shall be free to pursue such remedies as may be available to the Indemnified Party on the terms and subject to the provisions of this Agreement.

Section 8.06 Payments; Set-Off.

(a) Once a Loss is agreed to by the Indemnifying Party or finally adjudicated to be payable pursuant to this ARTICLE VIII, the Indemnifying Party shall satisfy its obligations within fifteen (15) Business Days of such final, non-appealable adjudication by wire transfer of immediately available funds.

(b) Upon notice to Seller specifying in reasonable detail the basis therefor, Buyer may set off any amount to which it may to be entitled under this ARTICLE VIII from such Person against amounts otherwise payable by Buyer hereunder to Seller including against the Deferred Payment and the Contingent Payment; provided that if it is finally determined that any amounts that Buyer set off pursuant to this Section 8.06(b) are payable to Seller, Buyer shall promptly pay to Seller such amounts plus interest from the date when they would have been payable to Seller, notwithstanding such setoff, at a per annum rate of interest equal to the "prime rate," as published in the "Money Rates" column of The Wall Street Journal, on the date when the amounts would have been payable to Seller. Neither the exercise of nor the failure to exercise such right of setoff will constitute an election of remedies or limit Buyer in any manner in the enforcement of any other remedies that may be available to it.

Section 8.07 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, unless otherwise required by Law.

Section 8.08 Exclusive Remedies. Subject to Section **2.06** and Section **10.11**, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from fraud, criminal activity or willful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this ARTICLE **VIII**. In furtherance of the foregoing, each party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to the indemnification provisions set forth in this ARTICLE **VIII**. Nothing in this Section **8.09** shall limit any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct.

ARTICLE IX
TERMINATION

Section 9.01 Termination. This Agreement may be terminated at any time prior to the Closing:

(a) by the mutual written consent of Seller and Buyer;

(b) by Buyer by written notice to Seller if:

(i) Buyer is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy or failure has not been cured by Seller within ten (10) days of Seller's receipt of written notice of such breach from Buyer; or

(ii) any of the conditions set forth in Section 7.01 or Section 7.02 shall not have been fulfilled within three (3) Business Days after the date hereof, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

(c) by Seller by written notice to Buyer if:

(i) Seller is not then in material breach of any provision of this Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in ARTICLE VII and such breach, inaccuracy or failure has not been cured by Buyer within ten (10) days of Buyer's receipt of written notice of such breach from Seller; or

(ii) any of the conditions set forth in Section 7.01 or Section 7.03 shall not have been fulfilled within three (3) Business Days after the date hereof, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

(d) by Buyer or Seller in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

Section 9.02 Effect of Termination. In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto, except (a) as set forth in this ARTICLE IX and Section 6.06 and ARTICLE X hereof; and (b) that nothing herein shall relieve any party hereto from liability for any willful breach of any provision hereof.

ARTICLE X
MISCELLANEOUS

Section 10.01 Expenses. Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred.

Section 10.02 Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.02):

If to Seller, to:

CCT Technologies, Inc.
808 West San Carlos Street
Suite 20
San Jose, CA 95126
Attn: Connie Tang, CEO
Email: ctang@cland.com

with a copy (which shall not constitute notice) to:

Ballard Spahr LLP
1 East Washington Street
Suite 2300
Phoenix, AZ 85004
Attn.: Laura C. Giles and Neal K. Rasmussen
Email: GilesL@ballardspahr.com and
rasmussenn@ballardspahr.com

If to Buyer, to:

ISSQUARED, Inc.
2659 Townsgate Road
Suite 227
Westlake Village, CA 91361
Attn: Kevin Hagen, CFO
Email: khagen@issquaredinc.com

with a copy (which shall not constitute notice) to:

Blank Rome LLP
One Logan Square
Philadelphia, PA 19103
Attn: Shaun Bockert
Email: shaun.bockert@blankrome.com

Section 10.03 Interpretation. For purposes of this Agreement, (a) the words "include," "includes" and "including" shall be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto" and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires,

references herein: (x) to Articles, Sections, Disclosure Schedules and Exhibits mean the Articles and Sections of, and Disclosure Schedules and Exhibits attached to, this Agreement; (y) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Disclosure Schedules and Exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

Section 10.04 Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

Section 10.05 Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

Section 10.06 Entire Agreement. This Agreement and the Ancillary Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control.

Section 10.07 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed; *provided, however*, that prior to the Closing Date, Buyer may, without the prior written consent of Seller, assign all or any portion of its rights under this Agreement to one or more of its direct or indirect wholly-owned subsidiaries. No assignment shall relieve the assigning party of any of its obligations hereunder.

Section 10.08 No Third-party Beneficiaries. Except as provided in ARTICLE VIII, this Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

Section 10.09 Amendment and Modification; Waiver. This Agreement may only be amended,

modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 10.10 Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement shall be governed by and construed in accordance with the internal Laws of the State of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction).

(b) ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY MAY BE INSTITUTED IN THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA OR THE COURTS OF THE STATE OF CALIFORNIA IN EACH CASE LOCATED IN THE CITY OF LOS ANGELES AND COUNTY OF LOS ANGELES, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. SERVICE OF PROCESS, SUMMONS, NOTICE OR OTHER DOCUMENT BY MAIL TO SUCH PARTY'S ADDRESS SET FORTH HEREIN SHALL BE EFFECTIVE SERVICE OF PROCESS FOR ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT IN ANY SUCH COURT. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURTS AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT OR THE ANCILLARY DOCUMENTS IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE ANCILLARY DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. EACH PARTY TO THIS AGREEMENT CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) SUCH PARTY HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG

OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.10(c).

Section 10.11 Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

Section 10.12 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

SELLER:

CCT TECHNOLOGIES, INC.

By:_____
Name: Connie Tang
Title: Chief Executive Officer and President

BUYER:

ISSQUARED, INC.

By:_____
Name: Balasubramanian Ramaiah
Title: President and Secretary

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

SELLER:

CCT TECHNOLOGIES, INC.

By:_____
Name: Connie Tang
Title: Chief Executive Officer and President

BUYER:

ISSQUARED, INC.

By: DocuSigned by: BALASUBRAMANIAN RAMAIAH AAD603C6E11D429...
Name: Balasubramanian Ramaiah
Title: President and Secretary

***ATTACHED*:**

Exhibit A – Sample Calculation of Closing Working Capital
Exhibit B – Assigned Contracts
Exhibit C – Other Excluded Assets
Exhibit D – Other Excluded Liabilities
Exhibit E – Terms and Conditions of Contingent Payment
Exhibit F – Tax Allocation Schedule
Exhibit G – Required Notices, Consents, and Waivers
Disclosure Schedules

EXHIBIT A
TO ASSET PURCHASE AGREEMENT

Sample Calculation of Closing Working Capital

Calculated as of March 31, 2024

Redacted

EXHIBIT B
TO ASSET PURCHASE AGREEMENT

Assigned Contracts

1) All active or in-process Contracts with Material Suppliers;

2) All active or in-process Contracts with Material Customers;

3) The Contracts listed as items 3 – 35 on Schedule 4.03(c);

4) All other Material Contracts, except for the DLL Agreement and Carahsoft Agreement (each as defined in the Disclosure Schedules); and

5) All Contracts with other suppliers and customers of the Business that the parties reasonable and mutually agree, in good faith, after the Closing should constitute Assigned Contracts for purposes of ensuring the continued operation of the Business by Buyer after the Closing.

EXHIBIT C
TO ASSET PURCHASE AGREEMENT

Other Excluded Assets

1) The two motor vehicles owned by Seller which are used primarily by executives of Seller.

EXHIBIT D
TO ASSET PURCHASE AGREEMENT

Other Excluded Liabilities

1) Any and all amounts payable to Alliant Group, LP in connection with the fee dispute referenced in Section 4.16 of the Disclosure Schedules.

EXHIBIT E
TO ASSET PURCHASE AGREEMENT

Terms and Conditions of Contingent Payment

1. **Definitions.**

   a. "**Earnout Period**" means the twelve-month period beginning at the open of business on the first day of the month immediately following the Closing Date and ending at the close of business on the last day of the twelfth full calendar month following the Closing Date. For example, if the Closing Date were February 29, 2024, the Earnout Period would be from March 1, 2024 (including that date) through February 28, 2025 (including that date).

   b. "**Gross Profits**" means all revenue recognized by the Buyer and/or its Affiliates in connection with services rendered by the Buyer and/or its Affiliates to Qualifying Customers during the Earnout Period, minus the costs of providing those services, as calculated in accordance with the Audited Financial Statements of Seller, consistent with the historical practices of Seller.

   c. "**Qualifying Customers**" means (i) customers of Seller as of the Closing Date, unless

Redacted

d. Buyer shall pay to Seller the Contingent Payment no later than two (2) months after the end of the Earnout Period, unless the dispute resolution processes and procedures contemplated above are still ongoing, in which case Buyer shall pay to Seller the finally agreed (in accordance with Section 2.06(a)) Contingent Payment no later than five (5) days after final determination of the amount of the Contingent Payment by wire transfer of immediately available funds to an account or accounts designated by Seller.

EXHIBIT F
TO ASSET PURCHASE AGREEMENT

Tax Allocation Schedule

The Purchase Price, which solely for Tax purposes shall include the Assumed Liabilities (the "**Tax Purchase Price**"), shall be allocated among the Purchased Assets as follows:

	Asset Type	**Allocation Method**
I	Cash and Cash Equivalents	The portion of the Tax Purchase Price allocated to the Class I Assets will be based on the fair market value of the Class I Assets. The parties agree that the fair market value of the Class I Assets will be the amount reflected on the Seller's balance sheet as of the Closing.
II	Actively Traded Personal Property	The portion of the Tax Purchase Price allocated to the Class II Assets will be based on the fair market value of the Class II Assets. The parties agree that the fair market value of the Class II Assets will be the value of the Class II Assets reflected on the Seller's balance sheet as of the Closing.
III	Accounts Receivable	The portion of the Tax Purchase Price allocated to the Class III Assets will be based on the fair market value of the Class III Assets. The parties agree that the fair market value of the Class III Assets will be the value of the Class III Assets reflected on the Seller's balance sheet as of the Closing.
IV	Inventory	The portion of the Tax Purchase Price allocated to the Class IV Assets will be based on the fair market value of the Class IV Assets. The parties agree that the fair market value of the Class IV Assets will be the value of the Class IV Assets reflected on the Seller's balance sheet as of the Closing.
V	Property Plant and Equipment; Other Tangible Assets	The portion of the Tax Purchase Price allocated to the Class V Assets will be based on the fair market value of the Class V Assets. The parties agree that the fair market value of the Class V Assets will be equal to the value of the Class V Assets reflected on the Seller's balance sheet as of the Closing.
VI, VII	Intangible Assets; Goodwill; Non-Competes; Going Concern Value	Remainder of the Tax Purchase Price.

EXHIBIT G
TO ASSET PURCHASE AGREEMENT

Required Notices, Consent, and Waivers

The consent of The City and County of San Francisco to assign to Buyer that certain OCA Technology Marketplace Master Agreement for Technology Goods and Services, dated January 19, 2024, by and between The City and County of San Francisco and Seller.

DISCLOSURE SCHEDULES
TO ASSET PURCHASE AGREEMENT

See Attached

Final Version

DISCLOSURE SCHEDULES

TO THE

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

CCT TECHNOLOGIES, INC.

AND

ISSQUARED, INC.

DATED AS OF APRIL 30, 2024

These Disclosure Schedules have been prepared and are being delivered in connection with the Asset Purchase Agreement (the "Purchase Agreement"), dated as of April 30, 2024, by and between CCT Technologies, Inc., a California corporation ("Seller"), and ISSQUARED, Inc., a California Corporation ("Buyer"). Capitalized terms used and not otherwise defined in these Disclosure Schedules will have the meanings given to them in the Purchase Agreement.

These Disclosure Schedules have been arranged in separately numbered sections corresponding to the sections of the Purchase Agreement. The headings in these Disclosure Schedules are for reference purposes only and will not affect in any way the meaning or interpretation of the Purchase Agreement or these Disclosure Schedules. Any item or matter required to be disclosed on a particular section of these Disclosure Schedules pursuant to the Purchase Agreement will be deemed disclosed on all other sections to which an appropriate cross reference is made or on all other sections where it is readily apparent on its face that such disclosure applies to such other section of these Disclosure Schedules.

These Disclosure Schedules are qualified in their entirety by reference to specific provisions of the Purchase Agreement, and are not intended to constitute, and will not be construed as constituting, representations or warranties of Seller except to the extent expressly provided in the Purchase Agreement. Inclusion of information in these Disclosure Schedules will not be construed as an admission or indication of any liability of any of Seller to any third party or that any breach or violation of any contract or law exists or has occurred. These Disclosure Schedules may include brief descriptions or summaries of certain contracts or documents. Such descriptions and summaries do not purport to be comprehensive and are qualified in their entirety by reference to the text of such contract or document.

In disclosing the information reflected in these Disclosure Schedules, Seller does not waive any attorney-client privilege associated with such information or any protection afforded by the work-product doctrine with respect to any of the matters disclosed herein.

Section 4.01
Organization and Qualification of Seller

1. California.

2. Colorado.

Section 4.03
No Conflicts; Consents

(a) None.

(b) None.

(c)

1. Loan and Security Agreement, dated September 23, 2020, by and between DeLage Landen Financial Services, Inc. and Seller (the "**DLL Agreement**") (may not be assigned without the consent of DLL; sale of assets is an event of default).
2. Credit Application and Agreement, dated September 28, 2022, by and between Carahsoft Technology Corporation and Seller (the "**Carahsoft Agreement**") (may not be assigned without the consent of Carahsoft).
3. Modified Gross Office Lease Agreement, dated August 18, 2021, by and between The Northwestern Mutual Life Insurance Company and Seller (may not be assigned without the consent of the landlord).
4. Lease Agreement, dated February 22, 2023, by and between Ferrara Enterprises and Seller (may not be assigned without the consent of the landlord).
5. Agreement dated June 9, 2021, by and between Seller and Regus Management Group, LLC, as amended by that Email Correspondence dated September 21, 2022. (may not be assigned without the consent of the landlord).
6. Authorized U.S. Apple Reseller Agreement, dated April 6, 2011, by and between Apple Inc. and Seller, as amended by that Amendment dated March 29, 2021, by and between Apple Inc. and Seller (may not be assigned without the consent of Apple).
7. Adobe Limited Scope Fulfillment Agreement, dated May 9, 2016, by and between Adobe Systems Incorporated and Seller (may not be assigned without the consent of Adobe), pursuant to which the following Partner Sales Orders, by and between the Seller and Adobe, Inc., also require consent for assignment:
    a. Partner Sales Order dated January 24, 2024, by and between Adobe Inc. and Seller (University of Silicon Valley).
    b. Partner Sales Order dated August 26, 2022, by and between Adobe Inc. and Seller (Chapman University).
    c. Partner Sales Order dated November 4, 2022, by and between Adobe Inc. and Seller (Colorado Mountain College).
    d. Partner Sales Order dated August 28, 2023, by and between Adobe Inc. and Seller (Association of Independent California Colleges and Universities ("**AICCU**")).
    e. Partner Sales Order dated August 26, 2022 by and between Adobe Inc. and Seller (AICCU).
    f. Partner Sales Order dated August 25, 2022, by and between Adobe Inc. and Seller (Foundation for California Community Colleges ("**FCCC**")).
    g. Partner Sales Order dated August 24, 2023, by and between Adobe Inc. and Seller (FCCC).

h. Partner Sales Order dated May 11, 2022, by and between Adobe Inc. and Seller (Iowa Association of Independent Colleges and Universities).
i. Partner Sales Order dated July 17, 2023, by and between Adobe Inc. and Seller (Loyola Marymount University).
j. Partner Sales Order dated August 4, 2022, by and between Adobe Inc. and Seller (National University).
k. Partner Sales Order dated March 4, 2022, by and between Adobe Inc. and Seller (University of San Diego).

8. Notice of Intended Award dated July 20, 2023, by and between City of San Jose and Seller, supplemented by that City of San Jose Purchase Order Standard Terms and Conditions.
9. Purchase Order Number OP 64050, dated August 24, 2023 by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions (work under purchase order may not be assigned without consent of City of San Jose).
10. Purchase Order Number OP 64220, dated October 10, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions (work under purchase order may not be assigned without consent of City of San Jose).
11. Purchase Order Number OP 64273, dated October 19, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions (work under purchase order may not be assigned without consent of City of San Jose).
12. Purchase Order Number OP 64275, dated October 19, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions (work under purchase order may not be assigned without consent of City of San Jose).
13. Purchase Order Number OP 64262, dated October 18, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions (work under purchase order may not be assigned without consent of City of San Jose).
14. Purchase Order Number OP 64264, dated October 18, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions (work under purchase order may not be assigned without consent of City of San Jose).
15. Purchase Order Number OP 64290, dated October 24, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions (work under purchase order may not be assigned without consent of City of San Jose).
16. Purchase Order Number OP 64296, dated October 24, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions (work under purchase order may not be assigned without consent of City of San Jose).
17. Purchase Order Number OP 64302, dated October 25, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms

and Conditions (work under purchase order may not be assigned without consent of City of San Jose).

18. Purchase Order Number OP 62692 dated September 21, 2022, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions (work under purchase order may not be assigned without consent of City of San Jose).
19. Sales Referral Agreement, dated August 4, 2014, by and between En Pointe Technologies Sales, Inc. and Seller (may be assigned with notice to En Pointe Technologies Sales).
20. Services Agreement, dated July 29, 2013, by and between Genesys Works – Bay Area and Seller (may not be assigned without the consent of Genesys Works).
21. Microsoft Partner Agreement, by and between Microsoft, Inc. and Seller (may not be assigned without the consent of Microsoft).
22. Subcontract and Consulting Agreement, dated July 9, 2014, by and between Jenesys Technologies Inc. and Seller, as supplemented by that Addendum No. 1 dated January 6, 2015, by and between Seller and Jenesys Technologies, Inc. (may be assigned with notice to Jenesys Technologies).
23. Agreement, dated April 15, 2022, by and between County of San Mateo and Seller, as amended by that Amendment dated May 16, 2023, by and between Seller and County of San Mateo, as further amended by that Amendment No. 2 dated December 11, 2023, by and between County of San Mateo and Seller, as further amended by that Amendment No. 3 dated April 9, 2024, by and between County of San Mateo and Seller (may not be assigned without the consent of County of San Mateo).
24. OCA Technology Marketplace Master Agreement for Technology Goods and Services, dated January 19, 2024, by and between The City and County of San Francisco and Seller (may not be assigned without the consent of The City and County of San Francisco).
25. Agreement for Resellers, by and between Lenovo (United States) Inc. and Seller (may not be assigned without the consent of Lenovo).
26. Customer Application dated November 8, 2011, by and between Jenne Distributors Inc. and Seller (may not be assigned without the consent of Jenne Distributors).
27. Partner Agreement, dated October 7, 2009, between HP Inc. and Seller (may not be assigned without the consent of HP).
28. Software License Agreement, dated June 2015, by and between Open Systems International, Inc. and Seller as agent to the San Francisco Public Utilities Commission (may not be assigned to a competitor of Open Systems International).
29. Agreement dated March 8, 2018, by and between County of Santa Clara and Seller (CW2229031), as amended by that First Amendment to Agreement dated March 4, 2021, as further amended by that Second Amendment to Agreement dated March 5, 2022, by and between County of Santa Clara and Seller (may not be assigned without the consent of Santa Clara).
30. Google Analytics Terms of Service, updated January 11, 2024, by and between Google Ireland Limited and Seller (may not be assigned without the consent of Google).
31. ChannelOnline Agreement, dated May 31, 2016, by and between CBS Interactive Inc. and Seller (may not be assigned without the consent of CBS Interactive).

32. Microsoft Unified Enterprise Support Partner Broker Work Order dated March 28, 2023, by and between Seller and Microsoft Corporation (may not be assigned without the consent of Microsoft).
33. Unified Support Partner Broker Program Agreement dated August 24, 2023, by and between Seller and Microsoft Corporation (may not be assigned without the consent of Microsoft).
34. Dell Technologies Partner Program Agreement undated between Seller and Dell Marketing L.P. or Dell Federal Systems L.P. (may not be assigned without the consent of Dell).
35. Indirect Channel Partner Agreement, dated April 21, 2024, by and between Cisco Systems, Inc. and Seller (may not be assigned without the consent of Cisco).

(d) None.

Section 4.04
Financial Statements

None.

Section 4.06
Absence of Certain Changes, Events and Conditions

(a) None.

(b) None.

(c) None.

(d) None.

(e) None.

(f)

1. The DLL Agreement and Carahsoft Agreement shall be paid off and terminated in connection with Closing.

(g) None.

(h) None.

(i) None.

(j) None.

(k) None.

(l) None.

(m) None.

(n) None.

(o) None.

(p) None.

(q) None.

(r) None.

Section 4.07(a)
Material Contracts

(i)

None.

(ii)

None.

(iii)

None.

(iv)

None.

(v)

None.

(vi)

1. DLL Agreement, which, for the avoidance of doubt, shall be terminated and paid off in connection with Closing.
2. Carahsoft Agreement, which, for the avoidance of doubt, shall be terminated and paid off in connection with Closing.

(vii)

1. Notice of Intended Award dated July 20, 2023, by and between City of San Jose and Seller, supplemented by that City of San Jose Purchase Order Standard Terms and Conditions.
2. Purchase Order Number OP 64050, dated August 24, 2023 by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions.
3. Purchase Order Number OP 64220, dated October 10, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions.
4. Purchase Order Number OP 64273, dated October 19, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions.
5. Purchase Order Number OP 64275, dated October 19, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions.

6. Purchase Order Number OP 64262, dated October 18, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions.
7. Purchase Order Number OP 64264, dated October 18, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions.
8. Purchase Order Number OP 64290, dated October 24, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions.
9. Purchase Order Number OP 64296, dated October 24, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions.
10. Purchase Order Number OP 64302, dated October 25, 2023, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions.
11. Purchase Order Number OP 62692 dated September 21, 2022, by and between City of San Jose and Seller, including the City of San Jose Purchase Order Standard Terms and Conditions.
12. Purchase Order dated November 28, 2023, by and between County of Santa Clara Technology Services and Solutions and Seller.
13. Purchase Order dated June 28, 2023, by and between Information Services Department (County of Santa Clara) and Seller.
14. Agreement dated April 15, 2022, by and between the County of San Mateo and Seller, as amended by that Amendment dated May 16, 2023, by and between Seller and County of San Mateo, as further amended by that Amendment No. 2 dated December 11, 2023, by and between County of San Mateo and Seller, as further amended by that Amendment No. 2 dated December 11, 2023, by and between County of San Mateo and Seller, as further amended by that Amendment No. 3 dated April 9, 2024, by and between County of San Mateo and Seller.
15. OCA Technology Marketplace Master Agreement for Technology Goods and Services, dated January 19, 2024, by and between The City and County of San Francisco and Seller.
16. Agreement dated March 8, 2018, by and between County of Santa Clara and Seller (CW2229031), as amended by that First Amendment to Agreement dated March 4, 2021, as further amended by that Second Amendment to Agreement dated March 5, 2022, by and between County of Santa Clara and Seller.

(viii)

1. Agreement for Resellers, by and between Lenovo (United States) Inc. and Seller.
2. Software License Agreement, dated June 2015, by and between Open Systems International, Inc. and Seller as agent to the San Francisco Public Utilities Commission.
3. Sales Referral Agreement, dated August 4, 2014, by and between En Pointe Technologies Sales, Inc. and Seller.
4. Microsoft Partner Agreement, by and between Microsoft, Inc. and Seller.
5. Indirect Channel Partner Agreement, dated April 21, 2024, by and between Cisco Systems, Inc. and Seller.

(ix)

None.

(x)

None.

(xi)

None.

(xii)

None.

(xiii)

1. Modified Gross Office Lease Agreement, dated August 18, 2021, by and between The Northwestern Mutual Life Insurance Company and Seller.
2. Lease Agreement, dated February 22, 2023, by and between Ferrara Enterprises and Seller.
3. Agreement dated June 9, 2021, by and between Seller and Regus Management Group, LLC, as amended by that Email Correspondence dated September 21, 2022.
4. All Contracts by and between the Seller and each of the Material Customers and Material Suppliers, or any Contracts between the Material Customers and Material Suppliers pursuant to which the Seller is implicated as either a "Partner" or "Online Administrator".

Section 4.08
Title to Purchased Assets

1. UCC lien no. 17-7620971868 filed on December 11, 2017 by Carahsoft Technology Corporation covering the Purchased Assets, which shall be terminated in connection with Closing.

2. UCC lien no. U210029231426 filed on March 9, 2021 by De Lage Laden Financial Services, Inc. covering the Purchased Assets, which shall be terminated in connection with Closing.

Section 4.09
Condition and Sufficiency of Assets

None.

Section 4.10(b)
Real Property

1. Modified Gross Office Lease Agreement, dated August 18, 2021, by and between The Northwestern Mutual Life Insurance Company and Seller, pursuant to which Seller leases the real property located at 808 West San Carlos Street, San Jose, California 95126.

2. Lease Agreement, dated February 22, 2023, by and between Ferrara Enterprises and Seller, pursuant to which Seller leases the real property located at 890 Service Street, Unit F, San Jose, California 95112.

3. Agreement dated June 9, 2021, by and between Seller and Regus Management Group, LLC, as amended by that Email Correspondence dated September 21, 2022, pursuant to which Seller leases the real property located at 505 Montgomery Street, 11th Floor, #1103, San Francisco, California 94111.

Section 4.11
Intellectual Property

(a)

(i

c-

k-

o
y.

ine

(b)

(i) None.

(ii)

1. Software License Agreement, dated June 2015, by and between Open Systems International, Inc. and Seller as agent to the San Francisco Public Utilities Commission.

2. Seller previously licensed the trademark "ComputerLand" from TD Synnex Corporation. Such arrangement has been terminated for a number of years.

3. Partner Agreement, dated October 7, 2009, between HP Inc. and Seller.

4. Adobe Limited Scope Fulfillment Agreement, dated May 9, 2016, by and between Adobe Systems Incorporated and Seller.

5. Channel Online Agreement, dated May 31, 2016, by and between CBS Interactive Inc. and Seller.

6. Authorized U.S. Apple Reseller Agreement dated April 6, 2011, by and between Apple Inc. and Seller, as amended.

7. Google Analytics Terms of Service, updated January 11, 2024, by and between Google Ireland Limited and Seller.

8. Indirect Channel Partner Agreement, dated April 21, 2024, by and between Cisco Systems, Inc. and Seller.

(iii) None.

(c) None.

Section 4.12
Inventory

1. UCC lien no. 17-7620971868 filed on December 11, 2017 by Carahsoft Technology Corporation covering the Purchased Assets, which shall be terminated in connection with Closing.

2. UCC lien no. U210029231426 filed on March 9, 2021 by De Lage Laden Financial Services, Inc. covering the Purchased Assets, which shall be terminated in connection with Closing.

Section 4.14
Customers and Suppliers

(a)

Redacted

Redacted

Section 4.15
Insurance

(a)

Policy	**Insurer**	**Policy Number**
Business Auto	Travelers Indemnity Company of CT	BA 8P281725-23
Umbrella	Travelers Property Casualty Company of America	CUP 8P285773-23
Commercial General Liability	Travelers Property Casualty Company of America	ZLP 41N27391-23
Technology E&O, Privacy and Security Liability	Travelers Property Casualty Company of America	ZPL 61N60174-23
Workers Compensation and Employers Liability	Travelers Property Casualty Company of America	UB 8P28401A-23
Excess E&O and Cyber	Scottsdale Insurance Company	EKS3495631

(b)

None.

Section 4.16
Legal Proceedings; Governmental Orders

(a)

Seller is currently disputing a fee payable to its vendor, Alliant Group, LP, in the amount of $55,500, which amount shall constitute an Excluded Liability for purposes of the Agreement.

(b)

None.

Section 4.17
Compliance With Laws; Permits

(a)

None.

(b)

Issuing Entity	Permit	Permit Number	Issuance Date	Expiration Date
California Department of Tax and Fee Administration	Seller's Permit	026820352-00010	3/1/2022	--
City and County of San Francisco	Business Registration Certificate (808 W San Carlos St. #2)	0428845	--	6/30/2024
City and County of San Francisco	Business Registration Certificate (505 Montgomery St. #1103)	0428845	--	6/30/2024
City of Fremont	Business Tax Certificate	056554	--	12/31/2024
City of San Jose	Business Tax Certificate	0509301210	--	2/15/2025
City of Antioch	Business License	3008820	--	3/31/2025
California Department of Industrial Relations	Public Works Contractor Registration	DIR# 1000049645	--	--
SAM.gov	--	Unique Entity ID: KH5FLDXDGKD3 CAGE Code: 1XRW7	9/12/2023	9/07/2024

Section 4.18
Employee Benefit Matters

(a)

1. CCT Technologies, Inc. 401(k) Plan.
2. Medical plan provided through Kaiser Permanente.
3. Dental plan provided through Principal.
4. Long-Term Disability Insurance provided through Principal.
5. Life Insurance provided through Principal.

(c)

None.

(e)

None.

(f)

None.

(g)

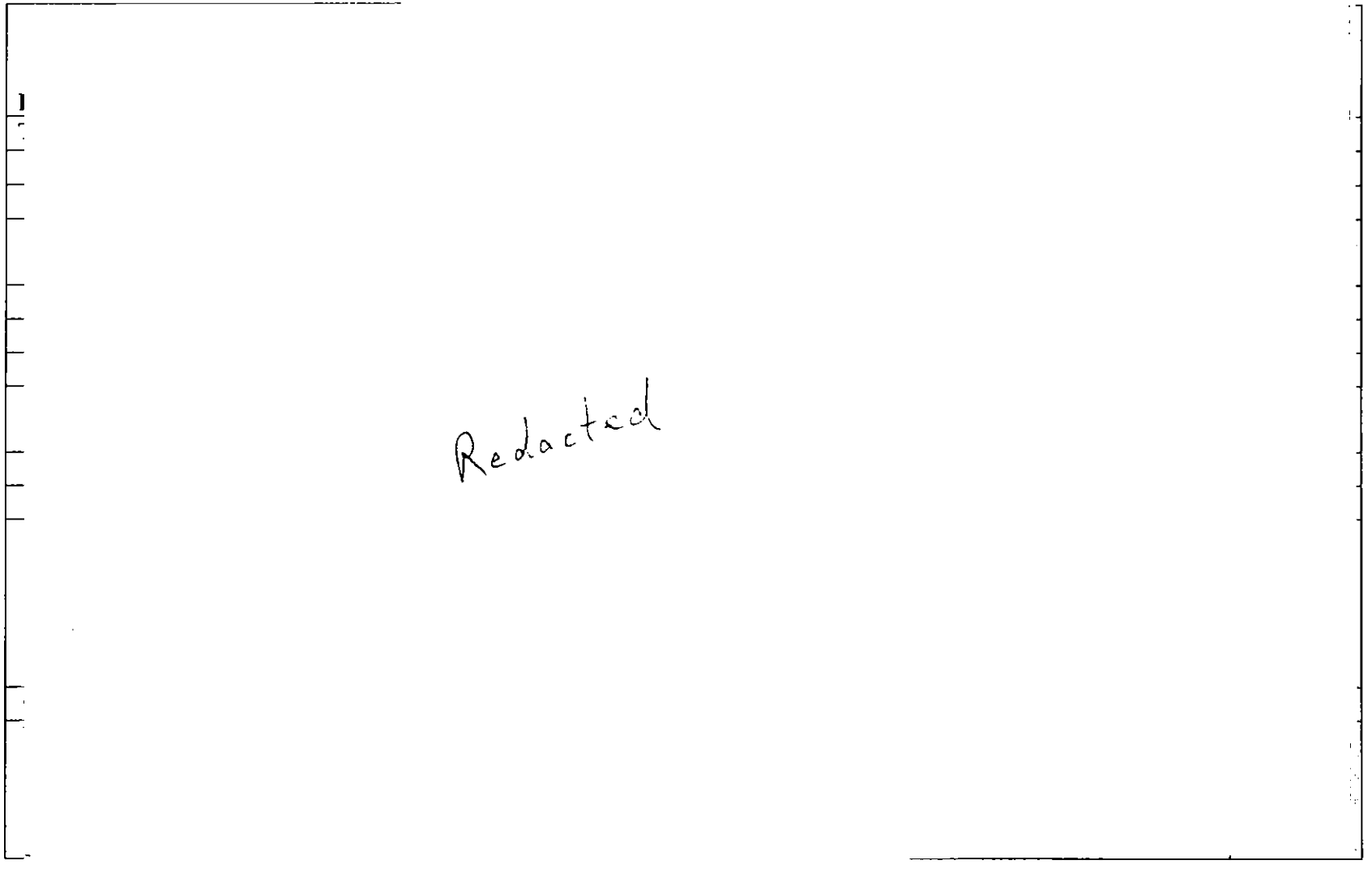
None.

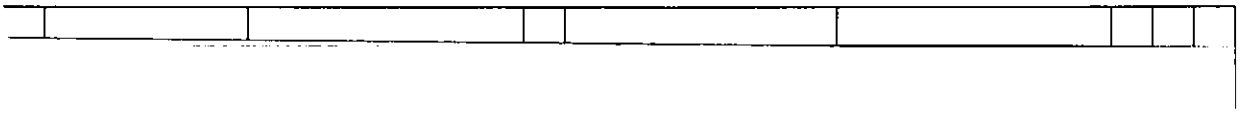
(j)

None.

Section 4.19
Employment Matters

(a)





Redacted

charges

Redacted

Section 4.20
Taxes

(a) None.

(b) None.

(c) None.

(d) None.

(e) None.

(f) None.

(g) None.

(h) None.

(i) None.

(j) None.

Appendix B

Bill of Sale and Assignment and Assumption Agreement

The Bill of Sale and Assignment and Assumption Agreement dated May 1, 2024 between Transferor and Transferee is attached on the following four (4) pages.

Execution Version

BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS BILL OF SALE AND ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Agreement**"), is entered into as of May 1, 2024, by and between CCT Technologies, Inc., a California corporation ("**Seller**"), and ISSQUARED, Inc., a California corporation ("**Buyer**").

W I T N E S S E T H:

WHEREAS, the Buyer and Seller are parties to that certain Asset Purchase Agreement, dated April 30, 2024 (the "**Purchase Agreement**"), pursuant to which the Seller has agreed to sell, convey, assign, transfer and deliver to the Buyer, and the Buyer has agreed to purchase and acquire from the Seller, free and clear of any Encumbrances, all right, title and interest in and to the Purchased Assets (but excluding the Excluded Assets) as more fully described in Section 2.01 of the Purchase Agreement, all subject to the terms and conditions provided herein and in the Purchase Agreement.

WHEREAS, pursuant to the Purchase Agreement, the Buyer has agreed to assume the Assumed Liabilities, as more fully described in Section 2.03 of the Purchase Agreement.

NOW, THEREFORE, the Buyer and Seller, in consideration of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereto agree as follows:

1. Sale of Assets. Subject to the terms and conditions of the Purchase Agreement, for good and valuable consideration, effective as of the Closing, the Seller hereby irrevocably sells, conveys, assigns, transfers and delivers to the Buyer, and the Buyer hereby purchases and acquires from the Seller, free and clear of all Encumbrances other than Permitted Encumbrances, all of Seller's right, title and interest in and to the Purchased Assets (which, for the avoidance of doubt, shall exclude the Excluded Assets).

2. Assignment and Assumption of Liabilities. Subject to the terms and conditions of the Purchase Agreement, the Seller hereby assigns to Buyer, and Buyer hereby accepts such assignment and assumes, the Assumed Liabilities, and Buyer agrees to perform, discharge, and satisfy all such Assumed Liabilities from and after the Closing.

3. Entire Agreement. Nothing contained in this Agreement shall be deemed or construed to supersede, limit, amend, reduce or expand the terms and conditions of the Purchase Agreement or any of the obligations, agreements, covenants, representations and warranties of the Seller or the Buyer contained in the Purchase Agreement, and this Agreement is made and accepted pursuant and is subject to all of the terms, conditions, representations and warranties set forth in the Purchase Agreement.

4. Definitions; Terms. Unless otherwise specifically defined herein, all capitalized terms used but not defined in this Agreement shall have the meanings assigned to such terms in the Purchase Agreement, which meanings are incorporated into this Agreement by this reference. In the event of any conflict or ambiguity between the terms of this Agreement and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall control.

5. Counterpart. This Agreement may be executed in one (1) or more counterparts (including by electronic transmission), each of which shall constitute an original, and all of which taken together shall constitute one and the same instrument.

6. Additional Provisions. The provisions of Sections 10.01 (Expenses), 10.07 (Successors and Assigns), and 10.10 (Governing Law; Submission to Jurisdiction, Waiver of Jury Trial) of the Purchase Agreement shall apply to this Agreement *mutatis mutandis*.

[*Signature page follows*]

IN WITNESS WHEREOF, the Buyer and the Seller have duly executed this Agreement as of the date first set forth above.

SELLER:

CCT TECHNOLOGIES, INC.

By: _____
Name: Connie Tang
Title: Chief Executive Officer and President

BUYER:

ISSQUARED, INC.

By: _____
Name: Balasubramanian Ramaiah
Title: President and Secretary

IN WITNESS WHEREOF, the Buyer and the Seller have duly executed this Agreement as of the date first set forth above.

SELLER:

CCT TECHNOLOGIES, INC.

By:_____
Name: Connie Tang
Title: Chief Executive Officer and President

BUYER:

ISSQUARED, INC.

By: DocuSigned by: BALASUBRAMANIAN RAMAIAH AAD603C6E11D429...
Name: Balasubramanian Ramaiah
Title: President and Secretary

Appendix B

Attorney Opinion Letter for Transferor

The Attorney Opinion Letter for Transferor dated June 24, 2024 is attached on the following one (1) page.

Ballard Spahr LLP

1 East Washington Street, Suite 2300
Phoenix, AZ 85004-2555
TEL 602.798.5400
FAX 602.798.5595
www.ballardspahr.com

Laura C. Giles
Tel: 602.798.5503
Fax: 602.798.5595
gilesl@ballardspahr.com

June 24, 2024

Jonathan Jew
Office of Contract Administration
City & County of San Francisco
jonathan.jew@sfgov.org

Re: ***Asset Purchase Agreement, dated April 30, 2024, by and between CCT Technologies, Inc. ("Seller"), and ISSQUARED, Inc. ("Buyer")***

Dear Mr. Jew:

This firm represents Seller in the above-referenced transaction. This letter shall confirm that the transaction was properly effected by Seller under applicable law, effective May 1, 2024.

Very truly yours,

Laura C. Giles

Appendix B

Attorney Opinion Letter for Transferee

The Attorney Opinion Letter for Transferee dated July 1, 2024 is attached on the following one (1) page.

BLANKROME
One Logan Square
130 North 18th Street | Philadelphia, PA 19103-6998

Phone: *(215) 569-5763*
Fax: *(215) 832-5763*
Email: *shaun.bockert@blankrome.com*

July 1, 2024

Jonathan Jew
Office of Contract Administration
City & County of San Francisco
jonathan.jew@sfgov.org

Re: Asset Purchase Agreement, dated April 30, 2024, by and between CCT Technologies, Inc. ("Seller"), and ISSQUARED, Inc. ("Buyer")

Dear Mr. Jew:

This firm represents Buyer in the above-referenced transaction. This letter shall confirm that the transaction was properly effected by Buyer under applicable law, effective May 1, 2024.

Very truly yours,

Shaun J. Bockert
Partner

SJB:

Appendix B

ISSQUARED, Inc. Articles of Incorporation

The Articles of Incorporation of the Transferee dated May 9, 2024 is attached on the following seven (7) pages.

California Secretary of State

Business Programs Division
1500 11th Street, Sacramento, CA 95814

Request Type: Certified Copies
Entity Name: ISSQUARED, INC.
Formed In: CALIFORNIA
Entity No.: 3294254
Entity Type: Stock Corporation - CA - General

Issuance Date: 05/09/2024
Copies Requested: 1
Receipt No.: 007013446
Certificate No.: 208696227

Document Listing

Reference #	Date Filed	Filing Description	Number of Pages
13887489-1	05/03/2010	Initial Filing	2
B1597-6765	03/17/2023	Statement of Information	2
B2514-3205	02/20/2024	Statement of Information	2

** **** ****** ******** End of list ******** ****** **** **

I, SHIRLEY N. WEBER, PH.D., California Secretary of State, do hereby certify on the Issuance Date, the attached document(s) referenced above are true and correct copies and were filed in this office on the date(s) indicated above.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California on May 09, 2024.

SHIRLEY N. WEBER, PH.D.
Secretary of State

To verify the issuance of this Certificate, use the Certifcate No. above with the Secretary of State Certification Verification Search available at **biz**fileOnline.sos.ca.gov.

3294254

FILED
In the Office of the Secretary of State
of the State of California
MAY 03 2010

Articles of Incorporation
Of
ISSquared, Inc.

Article 1 - Name

The name of the Corporation is ISSquared, Inc.

Article 2 – Purpose of Corporation

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business, or the practice of a profession permitted to be incorporated by the California Corporations Code.

Article 3 – Initial Agent For Service of Process

The name and address in the state of California of this corporation's initial agent for service of process is:

Balasubramanian Ramaiah
2212 Birch Glen St #102
Simi Valley, CA 93063

Article 4 – Corporate Capitalization

This Corporation is authorized to issue only one class of shares, which shall be designated "common" share. The total number of shares authorized to be issued is 20,000,000 shares. The par value is $0.01 per share.

Article 5 – Term of Existence

The Corporation shall have perpetual existence.

Article 6 – Registered Owners

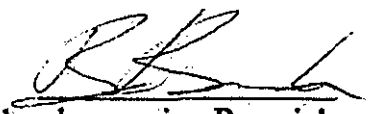
The Corporation, to the extent permitted by law, shall be entitled to treat the person in whose name any share or right is registered on the books of the corporation as the owner thereto, for all purposes, and except as may be agreed in writing by the Corporation, the Corporation shall not be bound to recognize any equitable or other claim to, or interest in, such share or right on the part of any other person, whether or not the Corporation shall have notice thereof.

Article 7 – Indemnification

The corporation is authorized to indemnify the Directors and Officers of the Corporation to the fullest extent permissible under California law.

Article 8 – Amendment

The Corporation reserves the right to amend, alter, change or repeal any provision contained in these Articles of Incorporation, or in any amendment hereto, or to add any provision in these Articles of Incorporation or to any amendment hereto, in any manner now or hereafter prescribed or permitted by the provisions of any applicable statute of the state of California, and all rights conferred upon shareholders in these Articles of Incorporation or any amendment hereto are granted subject to this reservation..



Balasubramanian Ramaiah
04/14/2010

BA20230462728

STATE OF CALIFORNIA
Office of the Secretary of State
STATEMENT OF INFORMATION
CORPORATION

California Secretary of State
1500 11th Street
Sacramento, California 95814
(916) 653-3516

For Office Use Only

-FILED-

File No.: BA20230462728

Date Filed: 3/17/2023

Entity Details

Corporation Name	ISSQUARED, INC.
Entity No.	3294254
Formed In	CALIFORNIA

Street Address of Principal Office of Corporation

Principal Address	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361

Mailing Address of Corporation

Mailing Address	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361
Attention	

Street Address of California Office of Corporation

Street Address of California Office	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361

Officers

Officer Name	Officer Address	Position(s)
• BALASUBRAMANIAN RAMAIAH	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361	Chief Executive Officer, Secretary, Chief Financial Officer

Additional Officers

Officer Name	Officer Address	Position	Stated Position
None Entered			

Directors

Director Name	Director Address
• Balasubramanian Ramaiah	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361
• John E Charles	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361
• Thomas Flanagan	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361
• Jagannadh Jatavallabhula	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361
• Kumar S Suchinth	2659 TOWNSGATE RD , STE 227 Westlake Village, CA 91361
• Ganesh Ramaiah	India VILLA NO: 51, APARNA HILL PARK BLVD BANDAAM KOMMU, CHANDA NAGAR HYDERABAD, IN-TG 5000050

The number of vacancies on Board of Directors is: 0

Agent for Service of Process	
California Registered Corporate Agent (1505)	C T CORPORATION SYSTEM Registered Corporate 1505 Agent
Type of Business	
Type of Business	Sales and services of IT products and solutions
Email Notifications	
Opt-in Email Notifications	Yes, I opt-in to receive entity notifications via email.

Labor Judgment

No Officer or Director of this Corporation has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code.

Electronic Signature

☒ By signing, I affirm that the information herein is true and correct and that I am authorized by California law to sign.

Melinda Noel	*03/17/2023*
Signature	Date

BA20240323117

STATE OF CALIFORNIA
Office of the Secretary of State
STATEMENT OF INFORMATION
CORPORATION

California Secretary of State
1500 11th Street
Sacramento, California 95814
(916) 653-3516

For Office Use Only

-FILED-

File No.: BA20240323117

Date Filed: 2/20/2024

Entity Details

Corporation Name	ISSQUARED, INC.
Entity No.	3294254
Formed In	CALIFORNIA

Street Address of Principal Office of Corporation

Principal Address	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361

Mailing Address of Corporation

Mailing Address	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361
Attention	

Street Address of California Office of Corporation

Street Address of California Office	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361

Officers

Officer Name	Officer Address	Position(s)
BALASUBRAMANIAN RAMAIAH	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361	Chief Executive Officer, Chief Financial Officer, Secretary

Additional Officers

Officer Name	Officer Address	Position	Stated Position
None Entered			

Directors

Director Name	Director Address
▪ Ganesh Ramaiah	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361
Kumar S Suchinth	2659 Townsgate Rd , Ste 227 Westlake Village, CA 91361
Jagannadh Jatavallabhula	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361
Thomas Flanagan	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361
John E Charles	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361
+ Kevin Hagen	2659 TWONSGATE RD, SUITE 227 WESTLAKE VILLAGE, CA 91361

The number of vacancies on Board of Directors is: 6

Agent for Service of Process

California Registered Corporate Agent (1505)	C T CORPORATION SYSTEM Registered Corporate 1505 Agent

Type of Business

Type of Business	Sales and services of IT products and solutions

Email Notifications

Opt-in Email Notifications	Yes, I opt-in to receive entity notifications via email.

Labor Judgment

No Officer or Director of this Corporation has an outstanding final judgment issued by the Division of Labor Standards Enforcement or a court of law, for which no appeal therefrom is pending, for the violation of any wage order or provision of the Labor Code.

Electronic Signature

☒ By signing, I affirm that the information herein is true and correct and that I am authorized by California law to sign.

Kelly Lettmann	*02/20/2024*
Signature	Date