

**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division**

**First Amendment**

THIS AMENDMENT (this “Amendment”) is made as of March 12, 2020, in San Francisco, California, by and between **CityBase, Inc.** (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Director of the Office of Contract Administration.

**Recitals**

WHEREAS, City and Contractor have entered into the Agreement (as defined below);  
and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period and increase the contract amount;  
and

WHEREAS, the Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through RFP TTX2017-08 issued on August 8, 2017 and an addendum to the Request for Proposal (“RFP”) issued on February 12, 2018 in which City selected Contractor as the highest qualified scorer pursuant to the RFP; and this modification is consistent therewith; and

NOW, THEREFORE, Contractor and the City agree as follows:

**Article 1      Definitions**

The following definitions shall apply to this Amendment:

1.1                    **Agreement.** The term “Agreement” shall mean the Agreement dated April 17, 2018 between Contractor and City, as amended by the:

First amendment,                    dated March 12, 2020.

1.2                    **Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

## **Article 2      Modifications to the Agreement.**

The Agreement is hereby modified as follows:

### **2.1                      Notification of Legal Requests and Management of City Data and Confidential Information** *The following sections are hereby added and incorporated in Articles 13 of the Agreement:*

**13.2.5 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 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.

### **13. 7    Management of City Data and Confidential Information**

**13. 7.1 Access to City Data.** City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

**13.7.2 Use of City Data and Confidential Information.** Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information 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 or Confidential Information 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 or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information 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.

**13.7.3 Disposition of Confidential Information.** Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, 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.

2.2 **Assignment.** *The following is hereby added to Article 4 of the Agreement, replacing the previous Section 4.6 in its entirety:*

4.6 **Assignment.** The Services to be performed 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, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an “Assignment”) 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.

2.3 **Withholding.** *The following is hereby added to Article 7 of the Agreement:*

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.

2.4 **Limitations on Contributions.** *The following is hereby added to Article 10 of the Agreement, replacing the previous Section 10.10 in its entirety:*

10.10 **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 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 10% in Contractor; any subcontractor listed in the bid 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.

**2.5 Article 1 Definitions, 1.17 “Deliverables”.** *Article 1 Definitions, 1.17 “Deliverables” of the Agreement currently reads as follows:*

1.17 "Deliverables" means Contractor' work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the “SaaS Implementation and Training Services,” attached as Appendix A.

*Such section is hereby amended in its entirety to read as follows:*

1.17 "Deliverables" means Contractor' work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the “SaaS Application & Hosting Services,” attached as Appendix A and in the “Scope of Services,” attached as Appendix E.

**2.6 Article 1 Definitions, 1.26 “Performance Credit”.** *Article 1 Definitions, 1.26 “Performance Credit” of the Agreement currently reads as follows:*

1.26 "Performance Credit" means credit due to City by Contractor with regard to Contractor’s service level obligations in Appendix D (Service Level Obligations).

*Such section is hereby amended in its entirety to read as follows:*

1.26 "Performance Credit" means credit due to City by Contractor with regard to Contractor’s service level obligations in Appendix B (Service Level Obligations).

**2.7 Article 1 Definitions, 1.45 “Third-Party Software”.** *Article 1 Definitions, 1.45 “Third-Party Software” of the Agreement currently reads as follows:*

1.45 “Third-Party Software” means the software described in Appendix B, “Third-Party Software-Included in this Agreement.”

*Such section is hereby amended in its entirety to read as follows:*

1.45 “Third-Party Software” means the software described in Appendix A, “Third-Party Software-Included in this Agreement.”

2.8 **Article 2 Term of the Agreement.** *Article 2 Term of the Agreement currently reads as follows:*

**Article 2 Term of the Agreement**

**2.1 Term.** The term of this Agreement shall commence on the later of: (i) April 17, 2018; or (ii) the Effective Date and expire on April 16, 2021, unless earlier terminated as otherwise provided herein.

**2.2 Options to Renew.** The City has three options to renew the Agreement for a period of two years each. The City may extend this Agreement beyond the expiration date by exercising an option at the City’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

*Such section is hereby amended in its entirety to read as follows:*

**Article 2 Term of the Agreement**

**2.1 Term.** The term of this Agreement shall commence on the later of: (i) April 17, 2018; or (ii) the Effective Date and expire on April 16, 2023, unless earlier terminated as otherwise provided herein.

**2.2 Options to Renew.** The City has two options to renew the Agreement for a period of two years each. The City may extend this Agreement beyond the expiration date by exercising an option at the City’s sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

2.9 **Compensation.** *Section Compensation 3.3 of the Agreement currently reads as follows:*

**3.3 Compensation**

**3.3.1 Payment.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix C, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Chief Assistant Treasurer, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed \$9,600,000. The breakdown of charges associated with this Agreement appears in Appendix C, “Calculation of Charges,” attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to both Parties as retainage, described in Appendix C. In no event shall City be liable for interest or late charges for any late payments.

(a) SaaS Implementation and Training Services: The breakdown of costs associated with the SaaS Implementation and Training Services appear in Appendix C (“Calculation of Charges”), attached hereto and incorporated by reference as though fully set forth herein. Compensation for services rendered pursuant to Appendix A shall be made in monthly payments on or before the 30th day of each month for work that City, in its reasonable discretion, concludes has been performed as of the 1st day of the immediately preceding month. In no event shall the amount for SaaS Implementation and Training Services under this Agreement exceed \$500,000.

(b) SaaS Application and Hosted Services: The breakdown of costs associated with the SaaS Application and Hosted Services appear in Appendix C (“Calculation of Charges”), attached hereto and incorporated by reference as though fully set forth herein. Compensation for services rendered pursuant to Appendix B shall be made in quarterly payments, based on a calendar year, on or before the 1st day of each quarter. In no event shall the amount for SaaS Application and Hosted Services under this Agreement exceed \$9,200,000. 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. Annual SaaS Application and Hosted Services charges shall not increase more than 3% of the rate of the year immediately prior to such increase.

*Such section is hereby amended in its entirety to read as follows:*

### 3.3 Compensation

3.3.1 **Payment.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix F and F-1, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Chief Assistant Treasurer, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 5 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed **\$37,000,000**. The breakdown of charges associated with this Agreement appears in Appendix F and F-1, “Calculation of Charges,” attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to both Parties as retainage, described in Appendix F and F-1. In no event shall City be liable for interest or late charges for any late payments.

(a) SaaS Implementation and Training Services: The breakdown of costs associated with the SaaS Implementation and Training Services appear in Appendix F and F-1 (“Calculation of Charges”), attached hereto and incorporated by reference as though fully set forth herein. Compensation for services rendered pursuant to Appendix A shall be made in monthly payments on or before the 30th day of each month for work that City, in its reasonable discretion, concludes has been performed as of the 1st day of the immediately preceding month. In no event shall the amount for SaaS Implementation and Training Services under this Agreement exceed **\$1,000,000**.

(b) SaaS Application and Hosted Services: The breakdown of costs associated with the SaaS Application and Hosted Services appear in Appendix F and F-1 (“Calculation of Charges”), attached hereto and incorporated by reference as though fully set forth herein. Compensation for services rendered pursuant to Appendix B shall be made in quarterly payments, based on a calendar year, on or before the 1st day of each quarter. In no event shall the amount for SaaS Application and Hosted Services under this Agreement exceed **\$36,000,000**. 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. Annual SaaS Application and Hosted Services charges shall not increase more than 3% of the rate of the year immediately prior to such increase.

2.10 **Services Contractor Agrees to Perform.** *Section 4.2.2 Services Contractor Agrees to Perform of the Agreement currently reads as follows:*

4.2.2 **Services Contractor Agrees to Perform.** During the Term of this Agreement, Contractor will perform all of the services set forth in Appendix A, “SaaS Implementation and Training Services,” Appendix B, “SaaS Application and Hosted Services,” and the following: payment online gateway services/service kiosk

(a) Provide all hardware, software and other equipment at Contractor's hosting site as described in Appendix B or any Description of Services (and any applicable disaster recovery site) as necessary to host and deliver the SaaS Application and Services described in Appendices A and B.

(b) Provide Authorized Users access to the SaaS Application and Services pursuant to the grant of access in Section 4.1.

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

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

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

(f) Provide Disaster Recovery Services as described in Section 14.4 and Appendix E.

*Such section is hereby amended in its entirety to read as follows:*

4.2.2 **Services Contractor Agrees to Perform.** During the Term of this Agreement, Contractor will perform all of the services set forth in Appendix A, “SaaS Application and Hosted Services,” Appendix E, “Scope of Work,” and the following: payment online gateway services/service kiosk

(a) Provide all hardware, software and other equipment at Contractor's hosting site as described in Appendix A or any Description of Services (and any applicable disaster recovery site) as necessary to host and deliver the SaaS Application and Services described in Appendices A and E.

(b) Provide Authorized Users access to the SaaS Application and Services pursuant to the grant of access in Section 4.1.

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

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

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

(f) Provide Disaster Recovery Services as described in Section 14.4 and Appendix C.

2.11 **Acceptance Testing; Document Delivery; Training.** *Section 4.3.1 Acceptance Testing; Document Delivery; Training of the Agreement currently reads as follows:*

#### 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 as further outlined in Appendix B, City and Contractor shall conduct user acceptance testing as outlined in Appendices A and B, as the case may be, 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 the Contractor in writing, and Contractor shall modify or correct the SaaS Services so that it satisfies the Acceptance criteria. The date of Acceptance will be that date upon which City provides Contractor with written notice of satisfactory completion of Acceptance testing. If City notifies Contractor after the Acceptance Testing Period that the SaaS Services do not meet the Acceptance criteria outlined in Appendices A and B, as the case may be, then City shall be entitled to terminate this Agreement in accordance with the procedures specified in Article 8 herein, and shall be entitled to a full refund of any fees paid as part of this Agreement prior to termination.

*Such section is hereby amended in its entirety to read as follows:*



### 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 as further outlined in Appendix A, City and Contractor shall conduct user acceptance testing as outlined in Appendices A and E, as the case may be, 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 the Contractor in writing, and Contractor shall modify or correct the SaaS Services so that it satisfies the Acceptance criteria. The date of Acceptance will be that date upon which City provides Contractor with written notice of satisfactory completion of Acceptance testing. If City notifies Contractor after the Acceptance Testing Period that the SaaS Services do not meet the Acceptance criteria outlined in Appendices A and E, as the case may be, then City shall be entitled to terminate this Agreement in accordance with the procedures specified in Article 8 herein, and shall be entitled to a full refund of any fees paid as part of this Agreement prior to termination.

2.12 **Liquidated Damages.** *Section 4.8 Liquidated Damages of the Agreement currently reads as follows:*

4.8 **Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services are delayed beyond the scheduled milestones and timelines as provided in Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the sum of \$1,000 per calendar day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Agreement was awarded. 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. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Contractor's failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City.

*Such section is hereby amended in its entirety to read as follows:*

4.8 **Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services are delayed beyond the scheduled milestones and timelines as provided in Appendix E, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the sum of \$1,000 per calendar day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Agreement was awarded. 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. Such deductions shall not be considered a penalty, but rather agreed upon

monetary damages sustained by City because of Contractor's failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City.

2.13 **Article 5 Insurance, 5.1.10.** *Article 5 Insurance, 5.1.10 of the Agreement currently reads as follows:*

5.1.10 Notwithstanding the foregoing, the following insurance requirements are waived or modified in accordance with the terms and conditions stated in Appendix C. Insurance.

*Such section is hereby amended in its entirety to read as follows:*

5.1.10 Notwithstanding the foregoing, the following insurance requirements are waived or modified in accordance with the terms and conditions stated in Appendix G. Auto Insurance Waiver.

2.14 **Warranty of Performance.** *Section 5.3.2 Warranty of Performance of the Agreement currently reads as follows:*

5.3.2 **Warranty of Performance.** Contractor warrants that when fully implemented, the SaaS Application to be configured and provided under this Agreement shall perform in accordance with the specifications applicable thereto. With respect to all Services to be performed by Contractor under this Agreement, including SaaS Implementation and Training Services outlined in Appendix A, and SaaS Application and Hosted Services outlined in Appendix B, Contractor warrants that it will use reasonable care and skill. All services shall be performed in a professional, competent and timely manner by Contractor personnel appropriately qualified and trained to perform such services. In the event of a breach of the foregoing warranty relating to any service under this Agreement within twelve (12) months from the date of provision such services, Contractor shall, at its sole cost and expense, re-perform such services.

*Such section is hereby amended in its entirety to read as follows:*

5.3.2 **Warranty of Performance.** Contractor warrants that when fully implemented, the SaaS Application to be configured and provided under this Agreement shall perform in accordance with the specifications applicable thereto. With respect to all Services to be performed by Contractor under this Agreement, including SaaS Application and Hosted Services outlined in Appendix A, and Scope of Work outlined in Appendix E, Contractor warrants that it will use reasonable care and skill. All services shall be performed in a professional, competent and timely manner by Contractor personnel appropriately qualified and trained to perform such services. In the event of a breach of the foregoing warranty relating to any service under this Agreement within twelve (12) months from the date of provision such services, Contractor shall, at its sole cost and expense, re-perform such services.

2.15                    **Backup and Recovery of City Data.** *Section 13.1.4 Backup and Recovery of City Data of the Agreement currently reads as follows:*

13.1.4                **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 Appendices A and/or B, Contractor shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Agreement and as outlined in Appendix D 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.

*Such section is hereby amended in its entirety to read as follows:*

13.1.4                **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 Appendices A and/or E, Contractor shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Agreement and as outlined in Appendix B 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.

2.16                    **Bank Accounts.** *Section 13.4.6 Bank Accounts of the Agreement currently reads as follows:*

13.4.6                **Bank Accounts.** Collections that represent funds belonging to the City and County of San Francisco from processed transactions completed in one day, shall be deposited, the following business day, without associated fees, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector. A complete schedule of payments can be referenced in Appendix C – Calculation of Charges.

*Such section is hereby amended in its entirety to read as follows:*

13.4.6                **Bank Accounts.** Collections that represent funds belonging to the City and County of San Francisco from processed transactions completed in one day, shall be deposited, the following business day, without associated fees, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector. A complete schedule of payments can be referenced in Appendix F & F-1 – Calculation of Charges.

2.17                    **Business Associates Addendum.** *Section 13.6 Business Associates Addendum of the Agreement currently reads as follows:*

13.6                    **Business Associate Addendum.** Contractor shall comply with the Health Insurance Portability and Accountability Act (HIPAA) Business Associate Addendum

(“Addendum”) terms and conditions, attached and incorporated as though fully set forth herein as Appendix F. To the extent that the terms of the Agreement are inconsistent with the terms of this Addendum, the terms of the Addendum shall control.

*Such section is hereby amended in its entirety to read as follows:*

13.6 **Business Associate Addendum.** Contractor shall comply with the Health Insurance Portability and Accountability Act (HIPAA) Business Associate Addendum (“Addendum”) terms and conditions, attached and incorporated as though fully set forth herein as Appendix D. To the extent that the terms of the Agreement are inconsistent with the terms of this Addendum, the terms of the Addendum shall control.

2.18 **Disaster Recovery.** *Section 14.4 Disaster Recovery of the Agreement currently reads as follows:*

14.4 **Disaster Recovery.** In the event of a disaster, as defined below, Contractor shall be provide disaster recovery services in accordance with the provisions of the disaster recovery plan attached as Appendix E hereto, or as otherwise set forth in this Agreement or any Statement of Work. Notwithstanding Section 14.1, 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 24 hours of the initial disruption to Services, City may, in its discretion, deem such actions to be a material default by Contractor incapable of cure, and City may immediately terminate this Agreement. For purposes of this Agreement, a "disaster" shall mean an interruption in the hosting services or the inability of Contractor to provide City with the SaaS Application and hosting services for any reason that could not be remedied by relocating the SaaS Application and hosting services to a different physical location outside the proximity of its primary Data Center.

*Such section is hereby amended in its entirety to read as follows:*

14.4 **Disaster Recovery.** In the event of a disaster, as defined below, Contractor shall be provide disaster recovery services in accordance with the provisions of the disaster recovery plan attached as Appendix C hereto, or as otherwise set forth in this Agreement or any Statement of Work. Notwithstanding Section 14.1, 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 24 hours of the initial disruption to Services, City may, in its discretion, deem such actions to be a material default by Contractor incapable of cure, and City may immediately terminate this Agreement. For purposes of this Agreement, a "disaster" shall mean an interruption in the hosting services or the inability of Contractor to provide City with the SaaS Application and hosting services for any reason that could not be remedied by relocating the SaaS Application and hosting services to a different physical location outside the proximity of its primary Data Center.

2.19 **Appendix A.** Appendix A is hereby replaced in its entirety by Appendix A-1, attached to this Amendment and fully incorporated within the Agreement.

2.20 **Appendix F-1.** Appendix F-1, Calculation of Charges, as attached is hereby added to this Agreement.

### **Article 3 Effective Date**

Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

### **Article 4 Legal Effect**

Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY

Recommended by:

DocuSigned by:  
*Tajel Shah*  
F45D3F78545F404...  
Tajel Shah  
Chief Assistant Treasurer  
Office of the Treasurer and Tax Collector

CONTRACTOR

CityBase, Inc.

DocuSigned by:  
*Michael Duffy*  
FF4BFCEFEA0B42F...  
Michael Duffy  
CEO  
30 North LaSalle Street #3400  
Chicago, IL 60602

Approved as to Form:

City Supplier number: 1084406

Dennis J. Herrera  
City Attorney

By: DocuSigned by:  
*Moe Jamil*  
DBDA121BAB35448...  
Moe Jamil  
Deputy City Attorney

Approved:

Alaric Degrafinried  
Director of the Office of Contract  
Administration, and Purchaser

By: \_\_\_\_\_  
Name: Alaric Degrafinried

**Attached Appendices:**

- Appendix A-1: SaaS Application & Hosting Services
- Appendix F-1: Calculation of Charges
- Appendix G: Auto Insurance Waiver

## **Appendix A**

### **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” include the following services online payment gateway services

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

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

available. In addition, to the extent that any generally available developments, versions, and updates of Internetrelated technology make available any new or enhanced features or functionality that can be incorporated into the Hosted Software, Host shall provide Customer the choice to take advantage of such technical developments.

**B. Third-Party Software:**

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

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 rolebased 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 seventy-two (72) 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 Section 13.1.5 of the Agreement.



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

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

**2. Scheduled SaaS Maintenance**

A. 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.

B. 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 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 [ttx.helpdesk@sfgov.org](mailto:ttx.helpdesk@sfgov.org) which will include at least a brief description of the reason for the down time and an estimate of the time when City can expect the site to be up and available.

**H. Changes in Functionality.** During the term of this Agreement, Contractor shall not reduce or eliminate functionality in SaaS Services. Where Contractor has reduced or eliminated functionality in SaaS Services, City, in its sole election, shall: (i) have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees; or, (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. Location:** The location of the approved Data Centers that will be used to host the SaaS Application are as follows:

Primary Tier 3 data center:  
Amazon Web Services  
Pacific Northwest region

Back-up Tier 2 data center:  
Amazon Web Services  
Pacific Northwest region

**C. Replacement Hosted Provider:** In the event Contractor changes the foregoing Hosted Provider, Contractor shall provide City with prior written notice of said change and disclose the name and location of the replacement Hosted Provider. The replacement Hosted Provider shall be a reputable Hosted Provider comparable to Contractor's current Hosted Provider, and said replacement Hosted Provider shall be located within the United States. The replacement Hosted Provider shall perform a SSAE 16, SOC 1 and/or SOC 2, Type II Report and SOC 3 Audit Report at least annually, in accordance with Section 13.3 of this Agreement.

**D. 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.

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

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

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

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

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

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

- iv. If a SaaS Severity Level 1 or Severity Level 2 Issue has been identified and appropriately triaged and classified by both Contractor and City during the test environment deployment test window, Contractor 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.
- v. If at any time during the testing window City identifies the presence of multiple SaaS Severity Level 1 or Severity Level 2 Issues that can be shown to materially impact City ability to continue testing, City may in writing elect to suspend testing until corrections for the SaaS Issues can be provided. Contractor will deploy corrections immediately upon availability with as much notice as practicable. Upon release of corrections, City will have five (5) calendar days to commence the testing within the then available remaining testing window.
- vi. Unless exists outstanding circumstances as described here within, Contractor will promote revision from Test Environment to

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

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

**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 the Contractor Technology System and has not created any additional malfunctions; and (iii) the Third-Party Software revision is available to Contractor. City is responsible for obtaining and installing or requesting 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 Appendix A to this Agreement.

**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.

**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 applications are 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 by either of these methods:

1. Contacting Contractor's Customer Support at 1-866-210-6270.
2. By entering the problem on the Contractor Service Portal Notifications can be submitted through the City Portal. This is the preferred method by which to contact Contractor.
3. If City cannot readily access the Contractor portal, City may contact Contractor at the "800" number listed above.

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

**C. 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. Technical Support**

**A. 24x7 Technical Support:** Authorized Users will make Technical Support requests by calling or emailing Contractor's Technical Support staff or by submitting a request via Contractor's customer service web portal. The Technical Support staff shall assign to the

request the SaaS Severity Level (as defined herein) indicated by the requestor. SaaS Severity Level 1 and 2 items will be addressed 24/7/365. SaaS Severity Level 3 and 4 items will be addressed during the standard business hours of 6:00am-6:00pm US Pacific Time.

**1. Business Hours:** Technical Support is available between the business hours of 6:00am to 6:00 pm US Pacific Time by accessing the Contractor’s subscriber Portal (or Toll-free at 1-866-210-6270, or by emailing [sanfranagencysupport@citybase.zendesk.com](mailto:sanfranagencysupport@citybase.zendesk.com) if access to the Contractor’s subscriber Portal is not readily available to City).

**2. After hours:** On-call technical support is available after 6pm and before 6:00am Pacific Time 24-hours a day/7 days a week/365 days a year, including Service Provider Holidays and weekends by accessing the Contractor’s subscriber Portal or calling Contractor’s Toll –free number 1-866-210-6270.

<b>SaaS Severity Level</b>	<b>Target Response Time</b>
<b>SaaS Severity Level 1:</b> <i>Requires immediate attention– Critical production functionality is not available or a large number of users cannot access the SaaS Application. Causes a major business impact where service is lost or degraded and no workaround is available, preventing operation of the business.</i>	<i>Request Response Time: 30 minutes. Request Resolution Time Target: &lt; 1 hours. Maximum Permitted Request Resolution Time: &lt; 24 hours</i>
<b>SaaS Severity Level 2:</b> <i>Requires priority attention - Some important production functionality is not available, or a small number of users cannot access the system. Causes significant business impact where service is lost or degraded and no workaround is available; however, the business can continue to operate in a limited fashion.</i>	<i>Request Response Time: 1 hr. Request Resolution Time Target: &lt; 2 hours Maximum Permitted Request Resolution Time: &lt; 48 hours</i>
<b>SaaS Severity Level 3:</b> <i>Requires attention –There is a problem or inconvenience. Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully and users are able to continue business operations.</i>	<i>Request Response Time: 1 hr. Request Resolution Time Target: &lt; 4 hours Maximum Permitted Request Resolution Time: &lt; 96 hours</i>
<b>SaaS Severity Level 4:</b> <i>There is a problem or issue with no loss of service and no business impact.</i>	<i>Request Response Time: 1 hr. Request Resolution Time Target: &lt; 24 hours Maximum Permitted Request Resolution Time: &lt; 4 days</i>

## **Appendix F-1 Calculation of Charges**

### **A. Card Present Permit Center Transactions**

For permit center point-of-sale (card present) transactions, hard costs of card and check processing are passed through directly to CCSF. No additional fees or minimums will be applied by CityBase, as CityBase software fees will be covered by a point-of-sale software subscription detailed in CLOVER CONTRACT ID: 1000013663. This pricing is effective for those agencies and debt types covered by the software subscription fee.

Card processing costs include interchange, card brand fees, and acquiring fees, and are reflected on the card processor's merchant statements. Hard costs of check processing include verification fees (optional).

### **B. DPH/EPIC Card Present Transaction Pricing\***

For DPH / Epic, Card-Present transactions, the existing fee structure will apply with the exception of a reduced minimum payment of \$1.

\*Effective 1st of the month following the full execution of the amendment.



**Appendix G  
Insurance Waiver**



April 2, 2020

Nick Royer – Accounting Manager  
CityBase, Inc.  
30 N. LaSalle Street, Suite 3400  
Chicago, IL 60602

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

Dear Risk Manager of SF,

CityBase, Inc. has been selected through an RFP process (RFP#ITX2017-08) to provide Online Payment Gateway Services to the City and County of San Francisco. Accordingly, the City and County of San Francisco and my company, CityBase, Inc. have negotiated an agreement that includes certain insurance obligations on my part, as the Contractor in this agreement,

Insurance:

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

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

Sincerely,

*Nick Royer*

*Waiver of Commercial Auto  
liability insurance is hereby  
granted based on statement  
presented on this letter.*

*E. Stephens  
Risk Manager  
4/2/20*