

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

**SOFTWARE LICENSE, MAINTENANCE, AND CLOUD SERVICES CONTRACT
BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO**

AND

MYTHICS, INC.

This contract (the “Contract”) is made this 30th day of November, 2017, in the City and County of San Francisco, State of California, by and between: Mythics Inc., hereinafter referred to as “Contractor,” and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its Director of the Office of Contract Administration, hereinafter referred to as “Purchasing” and the San Francisco Public Utilities Commission (“SFPUC”).

Recitals

WHEREAS, the SFPUC through the Office of Contract Administration conducted a Request for Proposals (WP17001780) for the purchase of certain as-needed perpetual licenses, cloud services and technical support; and

WHEREAS Contractor was the selected proposer in response WP17001780; and

WHEREAS the SFPUC now wishes to procure certain as-needed Programs, Programs Technical Support and Cloud Services in accordance with Appendix A; and

WHEREAS, the General Manager of the San Francisco Public Utilities Commission approved this Agreement pursuant to the delegated authority granted by the Commission under Resolution No. **TBD**; and

WHEREAS, the San Francisco Board of Supervisors approved this Agreement pursuant to Resolution No. **TBD**; and

WHEREAS, Contractor represents and warrants that it is qualified to provide such Programs and Services required by City as set forth under this Agreement.

Now, THEREFORE, the parties agree as follows:

1. Definitions. Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Contract, it shall have the meaning herein set forth.

Contract	This document and any attached appendices and exhibits, including any future written and executed amendments.
Authorization; Authorization document	This Contract a Blanket Purchase Order, Contract Order, or Purchase Order of the City, properly executed by the SFPUC and Purchasing, and certified by the Controller for the specific funding of this Contract or any modification thereof.
Programs and Cloud Services	One or more of the Programs and Cloud Services identified in Appendix A, including 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 Authorization Document may identify more than one Program or Cloud Services product or more than one copy of any product. The City’s rights with respect to the Programs and are outlined in Appendix B. The City’s rights with respect to the Cloud Services are outlined in Appendix C.
Programs Technical Support	Any and all activities carried out by Contractor in order to make available versions or updates of the Programs as outlined in Appendix B. The City’s rights with respect to the Programs Technical Support and are outlined in Appendix B.

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 **SFPUC**. The words “sufficient,” “necessary,” or “proper,” and the like, mean sufficient, necessary or proper in the judgment of the SFPUC, unless otherwise indicated by the context.

2. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Contract is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Contract 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 Contract 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 Contract in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor’s assumption of risk of possible non-appropriation is part of the consideration of this Contract.

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

3. Effective Date of the Contract. This Contract shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing. Contractor is under no obligation to deliver any goods or services under this Contract until it receives written notice in the form of a Purchase Order from the City that it may do so.

4. Term of the Contract. Subject to Section 5,

- a. The term of the Programs purchased and granted under Appendix B of this Contract shall commence upon delivery of the Programs and shall continue in perpetuity unless sooner terminated in accordance with the provisions of this Contract.
- b. The term of the Program Technical Support under this Contract shall commence upon delivery of the Programs procured pursuant to this Contract and continue through March 22, 2023, provided City, at its sole discretion, exercises its right to purchase, on an annual basis, Program Technical Support under this Contract by issuing a purchase order and paying Contractor in advance for said annual Program Technical Support Services based on Program Technical Support charges then in effect and in accordance with Appendix A.
- c. The term of the Cloud Services under Appendix C of this Contract shall commence upon the provisioning of the Cloud Services and continue through March 22, 2023, provided City, at its sole discretion, exercises its right to purchase, on an annual subscription basis, Cloud Services under this Contract by issuing a purchase order and paying Contractor in advance for said Cloud Services based on charges then in effect and in accordance with Appendix A.

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

6. Charges. All charges will be in accordance with and shall not exceed those outlined in Appendix A.

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

8. Warranties: Conformity to Specifications.

- a. THE WARRANTY PROVISION OF APPENDIX B SHALL CONTROL FOR THE PROGRAMS AND PROGRAMS TECHNICAL SUPPORT.
- b. THE WARRANTY PROVISION OF APPENDIX C SHALL CONTROL FOR THE CLOUD SERVICES

9. Payment. Compensation shall be due and payable within 45 days of the date of invoice. In no event shall the amount of this Contract exceed **TBD**. The breakdown of costs associated with this Contract is provided for in Appendix A. No charges shall be incurred under this Contract nor shall any payments become due to Contractor until Programs, Cloud Services and/or Program Technical Support acquired under this Contract are delivered by Contractor and

approved by the SFPUC as being in accordance with this Contract. In no event shall City be liable for interest or late charges for any late payments.

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

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

12. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

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

14. Payment Does Not Imply Acceptance of Work. Reserved.

15. Qualified Personnel. Reserved.

16. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City. The acceptance or use of such equipment by Contractor or any of its employees means that Contractor accepts full responsibility for and agrees to exonerate, indemnify, defend and save harmless City from and against any and all claims for any damage or injury of any type arising from the use, misuse or failure of such equipment, whether such damage be to Contractor, its employees, City employees or third parties, or to property belonging to any of the above.

17. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

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

total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

18. Insurance

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

1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

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

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

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

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

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

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

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

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

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

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

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

19. Indemnification and General Liability. Notwithstanding those sections pertaining to Infringement Indemnification in accordance with Appendices B and C, Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Contract, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Contract and except where such loss, damage, injury, liability or claim is the result of active negligence or willful misconduct of City and in 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. 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.

20. Limitation of Liability

- a. THE LIMITATION OF LIABILITY PROVISION OF APPENDIX B SHALL CONTROL FOR THE PROGRAMS AND PROGRAMS TECHNICAL SUPPORT.
- b. THE LIMITATION OF LIABILITY PROVISION OF APPENDIX C SHALL CONTROL FOR THE CLOUD SERVICES
- c. Add language for carve outs

21. Force Majeure.

- a. THE FORCE MAJEURE PROVISION OF APPENDIX B SHALL CONTROL FOR THE PROGRAMS AND PROGRAMS TECHNICAL SUPPORT.
- b. THE FORCE MAJEURE PROVISION OF APPENDIX C SHALL CONTROL FOR THE CLOUD SERVICES

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

23. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

24. Termination

a. **Basis for Termination by City:** City shall have the right, without further obligation or liability to Mythics (except as specified in Sections 29 (Protection of Private Information) and 30(c) (Disposition of Licensed Software on Termination) of the main Agreement: (i) to immediately terminate this Agreement or the applicable Authorization Document if Mythics commits any breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by City of such breach, in which event, Mythics shall reimburse City in the same manner as for the removal of the Licensed Software due to infringement under Section 13; or (ii) to terminate this Agreement or the applicable Authorization Document upon ninety (90) days prior written notice for any reason if the license granted hereunder is for any term other than perpetual. In the event the license granted is perpetual, termination of this Agreement or the applicable Authorization Document by City shall be effective upon receipt by Mythics of written notice of said termination.

b. **Basis for Termination by Contractor for Programs and Programs Technical Support.** See section entitled “End of Agreement” in appendix B.

c. **Basis for Termination by Contractor for Cloud Services.** See section entitled “End of Agreement” in appendix C.

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

TBD. Infringement Indemnification.

TBD. Nondisclosure as per Appendices B and C.

TBD. Submitting False Claims; Monetary Penalties.

TBD. Proprietary or Confidential Information of City

TBD. Taxes

TBD. Protection of Private Information.

TBD. Payment Does Not Imply Acceptance of

TBD. Non-Waiver of Rights.

Work.

TBD. Responsibility for Equipment
TBD. Independent Contractor; Payment of
Taxes and Other Expenses

TBD. Insurance

TBD. Indemnification and General Liability.

TBD. Incidental and Consequential Damages.

TBD. Liability of City.

TBD. Modification of Agreement

TBD. Administrative Remedy for
Agreement Interpretation

TBD. Agreement Made in California;
Venue.

TBD. Construction

TBD. Entire Agreement

25. Notice to the Parties. Unless otherwise indicated elsewhere in this Contract or Appendices B and C, all written communications sent by the parties may be by U.S. mail, and e-mail, and shall be addressed as follows:

To City: SFPUC IT Services
525 Golden Gate Avenue, 5th Floor
San Francisco, CA 94112
Email: tmoayed@sfwater.org
Attention: Taraneh Moayed

To Contractor: Mythics, Inc.
1439 N. Great Neck Rd. Suite 201
Virginia Beach, VA 23454
Attention: General Counsel, Legal Department.

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

26. Bankruptcy. In the event that either party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this Agreement shall terminate and be of no further force and effect.

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

28. Assignment.

- a. THE ASSIGNMENT PROVISION OF APPENDIX B SHALL CONTROL FOR THE PROGRAMS AND PROGRAMS TECHNICAL SUPPORT.
- b. THE ASSIGNMENT PROVISION OF APPENDIX C SHALL CONTROL FOR THE CLOUD SERVICES

29. Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Contract.

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

31. Limitations on Contributions. Through execution of this Contract, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

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

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

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

35. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

36. Contract 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.

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

39. Entire Agreement. This contract, including all Appendices hereto sets forth the entire agreement between the parties, and supersedes all other oral or written provisions. If any provision of this Contract is held to be unenforceable, this Contract shall be construed without such provision.

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

39. Graffiti Removal. Reserved.

40. Food Service Waste Reduction Requirements. Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of \$100 liquidated damages for the first breach, \$200 liquidated damages for the second breach in the same year, and \$500 liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

41. Cooperative Drafting. This Contract has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Contract reviewed and revised by legal counsel. No party shall be considered the drafter of this Contract, 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 Contract.

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

CITY

CONTRACTOR

Recommended by:

MYTHICS, INC.

Harlan L. Kelly, Jr.
General Manager
San Francisco Public Utilities Commission

[name of authorized representative]
[title]
[optional: address]
[optional: city, state, ZIP]

City vendor number: [vendor number]

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
[name of Deputy City Attorney]
Deputy City Attorney

Approved:

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

Appendices

- A:** Schedule of Programs, Programs Technical Support and Cloud Services Available for Purchase under this Agreement
- B:** Mythics-Oracle Master Level Service Agreement
- C:** Mythics-Oracle Public Sector Cloud Services Agreement Terms