

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

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

CityBase, Inc.

This Agreement is made this 17th day of April, 2018, in the City and County of San Francisco (“City”), State of California, by and between CityBase, Inc., 30 N. LaSalle #3400 Chicago, IL 60602 (“Contractor”) and City.

Recitals

WHEREAS, the Office of the Treasurer and Tax Collector (“Department”) wishes to engage CityBase, Inc., for online payment gateway services

and,

WHEREAS, this 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

WHEREAS, there is no Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement; and

WHEREAS, Contractor represents and warrants that it is qualified to provide the Software as a Service Application and perform the Services required by City as set forth under this Agreement; and

WHEREAS, the City’s Civil Service Commission approved Contract number 41074-15/16 on 10/3/2017;

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “Acceptance” means notice from the City to Contractor that the SaaS Application meets the specifications and requirements contained in the Documentation and Appendices A and/or B.

1.2 "Acceptance Period" means the period allocated by City to test the SaaS Application to determine whether it conforms to the applicable specifications and, if appropriate, properly operates in the defined operating environment, is capable of running on a repetitive basis, and is otherwise in compliance with the service level obligations without failure.

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

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

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

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

1.7 "City Data" means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City, including data resulting from use of the SaaS Service. City Data includes, without limitation, Confidential Information.

1.8 "City Portal" means an electronic gateway to a secure entry point via Contractor's Website that allows City and its Authorized Users to log in to an area where they can view and download information or request assistance regarding the SaaS Application and Services.

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

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

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

1.12 "Contractor" or "Consultant" means CityBase, Inc., 30 N. LaSalle #3400 Chicago, IL 60602

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

1.14 “Contractor’s Website” means the Website that provides Authorized User access to the SaaS Application Services.

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

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

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.

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

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

1.20 "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.21 “End Users” means any Authorized User who accesses the Contractor’s Website and uses the SaaS Application and Services.

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

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

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

1.25 "Party" and "Parties" mean the City and Contractor either collectively or individually.

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).

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

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

1.29 "SaaS Application/SaaS Software" means the licensed and hosted computer program and associated documentation, as listed in this Agreement and Appendices, and any modification or Upgrades or modifications to the program(s), residing in Contractor's servers that provides the SaaS Services that may be accessed by Authorized Users through the Internet.

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

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

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

1.33 "SaaS Maintenance Services" means the activities to investigate, resolve SaaS Application and Services issues and correct product bugs arising from the use of the SaaS Application and Services in a manner consistent with the published specifications and functional requirements defined during implementation.

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

1.35 "SaaS Severity Level" means a designation of the effect of a SaaS Issue on the City. The severity of a SaaS Issue is initially defined by the City and confirmed by Contractor. Until the SaaS Issue has been resolved, the Severity Level may be raised or lowered based on Contractor's analysis of impact to business.

1.36 “SaaS Software” means those SaaS licensed programs and associated documentation licensed to City by Contractor as listed in this Agreement and Appendices, and any modification or Upgrades or modifications to the program(s) provided under this Agreement.

1.37 “SaaS Software Error” means any failure of SaaS Software to conform in all material respects to the requirements of this Agreement or Contractor’s published specifications.

1.38 “SaaS Software Error Correction” means either a modification or addition that, when made or added to the SaaS Software, brings the SaaS Software into material conformity with the published specifications, or a procedure or routine that, when observed in the regular operation of the SaaS Software, avoids the practical adverse effect of such nonconformity.

1.39 “SaaS Software Revision” means an update to the current SaaS Software Version of the SaaS Software code that consists of minor enhancements to existing features and code corrections. SaaS Software Revisions are provided and included with the annual service payments made by City to Contractor for the SaaS Service.

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

1.41 “Scheduled SaaS Maintenance” means the time (in minutes) during the month, as measured by Contractor, in which access to the SaaS Services is scheduled to be unavailable for use by the City due to planned system maintenance and major version upgrades.

1.42 "Services" means the work performed by Contractor under this Agreement as specifically described in the "SaaS Implementation and Training Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.43 “Software” means the SaaS Software and Contractor provided Third-Party Software All Software, revisions and versions provided by Contractor shall be subject to the terms and conditions of this Agreement, including any amendments thereto.

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

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

1.46 “Transition Services” means that assistance reasonably requested by City to effect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider.

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."

Article 3 Financial Matters

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

3.3 Compensation

3.3.1 **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.

3.3.2 **Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until Office of the Treasurer and Tax Collector. approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

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

3.3.4 **Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City as specified in 3.3.6,” or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.5 **Getting paid for goods and/or services from the City.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated

Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

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

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

Article 4 SaaS Services and Resources

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

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

4.1.2 **SaaS Application Title.** City acknowledges that title to each SaaS Application and SaaS Services shall at all times remain with Contractor, and that City has no rights in the SaaS Application or SaaS Services except those expressly granted by this Agreement.

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

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

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

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

Contractor’s Project Manager: Michael Duffy
30 North LaSalle Street #3400
Chicago , IL 60602

MDuffy@thecitybase.com
(312)925-9911

City's Project Manager:

Tajel Shah
1 Dr. Carlton B Goodlett Place
San Francisco, CA 94102
Tajel.Shah@sfgov.org
(415)554-4506

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.

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.

4.3.2 **Document Delivery.** Contractor will deliver completed Documentation in electronic format for the SaaS Application and Services at the time it gives City access to the SaaS Application and Services. The Documentation will accurately and completely describe the functions and features of the SaaS Application and Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the SaaS Application and Services. City shall have the right to make any number of additional copies of the Documentation at no additional charge. The City may withhold its issuance of the notice of final Acceptance until City receives the completed Documentation.

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

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

4.5.1 **Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor,

is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.5.2 **Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.6 **Assignment.** The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

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

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.

Article 5 Insurance; Indemnity and Warranties

5.1 Insurance.

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

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

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

(c) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

(d) Technology Errors and Omissions Liability coverage, with limits of \$2,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

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

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

(e) Contractor shall maintain in force during the full life of the agreement Cyber and Privacy Insurance with limits of not less than \$1,000,000 per occurrence and \$2,000,000 general aggregate. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

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

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

(b) 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.

5.1.3 All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

5.1.4 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.

5.1.5 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.

5.1.6 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.

5.1.7 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.8 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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

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

5.2 Indemnification

5.2.1 **General Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them

from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except where such Claims are the result of the sole active negligence or willful misconduct of City. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

5.2.2 **Infringement Indemnification.** If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the SaaS Application and Services infringes a patent, copyright, or any right of a third-party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the SaaS Application and/or Services constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement. In the event a final injunction is obtained against City's use of the SaaS Application and Services by reason of Infringement, or in Contractor's opinion City's use of the SaaS Application and Services is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the SaaS Application and Services as contemplated hereunder, (b) replace the SaaS Application and Services with a non-infringing, functionally equivalent substitute SaaS Application and Services, or (c) suitably modify the SaaS Application and Services to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the SaaS Application and Services. If none of these options is reasonably available to Contractor, then the applicable Authorization Document or relevant part of such Authorization Document may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid under this Agreement for the license of such infringing SaaS Application and/or Services. Any unauthorized modification or attempted modification of the SaaS Application and Services by City or any failure by City to implement any improvements or updates to the SaaS Application and Services, as supplied by Contractor, shall void this indemnity unless City has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on City's use or

combination of the SaaS Application and Services with products or data of the type for which the SaaS Application and Services was neither designed nor intended to be used.

5.3 **Warranties of Contractor**

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

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.

5.3.3 **Compliance with Description of Services.** Contractor represents and warrants that the SaaS Application and Services specified in this Agreement and all updates and improvements to the SaaS Application and Services will comply in all material respects with the specifications and representations specified in the Documentation (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) as set forth (i) herein or in any amendment hereto, and (ii) the updates thereto.

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

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

5.3.6 **Warranty of Suitability for Intended Purpose.** Contractor warrants that the SaaS Application and Services will be suitable for the intended purpose of online payment gateway services

Article 6 Liability of the Parties

6.1 **Liability of City.** CITY’S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, “PAYMENT,” OF THIS AGREEMENT.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

6.3 **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

Article 7 Payment of Taxes

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

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

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

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

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

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

Article 8 Termination; Disposition of Content; Survival

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

8.1.1 To immediately terminate this Agreement if Contractor commits any breach of this Agreement or default (see Section 8.2 below) and fails to remedy such breach or default within ten (10) days after written notice by City of such breach (10-day cure period), in which event, Contractor shall refund to City all amounts paid under this Agreement for the SaaS Application and/or Services in the same manner as if City ceased to use the SaaS Application due to infringement under Section 5.2.2. At City’s sole election, the 10-day cure period will *not* apply to termination for data breach and/or breach of confidentiality; or

8.1.2 To terminate this Agreement upon thirty (30) days prior written notice for City's convenience and without cause, provided that except for termination due to an uncured breach as set forth in this Section and in the event of Infringement, City shall not be entitled to a refund of any amounts previously paid under this Agreement.

8.2 Each of the following shall constitute an immediate event of default (“Event of Default”) under this Agreement:

8.2.1 Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims	11.10	Compliance with Laws
4.7	Assignment	10.10	Alcohol and Drug-Free Workplace
Article 5	Insurance; Indemnity and Warranties		
Article 7	Payment of Taxes	13.2	Proprietary or Confidential Information

8.2.2 Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten (10) days after written notice thereof from City to Contractor.

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

substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

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

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

8.3 **Bankruptcy.** In the event that either Party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other Party this Agreement shall terminate and be of no further force and effect. Upon termination of this Agreement pursuant to this Section, Contractor shall within forty-eight (48) hours return City's Data in an agreed-upon machine readable format. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within thirty (30) calendar days purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five (5) calendar days that such purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

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

8.4.1 Contractor may immediately discontinue the SaaS Services and City shall immediately cease accessing the SaaS Application and Services. Contractor shall within five (5) calendar days of the expiration or termination of the SaaS Services return City's data in an agreed-upon machine readable format. This provision shall also apply to all City Data that is in the possession of subcontractors, agents or auditors of Contractor. Such data transfer shall be done at no cost to the City. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within thirty (30)

calendar days purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five (5) calendar days that such purge and/or physical destruction has occurred. Secure disposal shall be accomplished by “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

8.4.2 Contractor shall provide to City and/or Successor Service Provider assistance requested by City to effect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider. During the transition period, SaaS and City Data access shall continue to be made available to City without alteration. Such Transition Services shall be provided on a time and materials basis if the City opts to return to its own servers or City chooses a Successor Service Provider. Transition costs may include: (a) developing a plan for the orderly transition of the terminated SaaS Services from Contractor to Successor Service Provider; (b) if required, transferring the City Data to Successor Service Provider; (c) using commercially reasonable efforts to assist City in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Contractor in connection with the Services; (d) using commercially reasonable efforts to make available to City, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Contractor in connection with the SaaS Services; and, (e) such other activities upon which the Parties may agree. Notwithstanding the foregoing, should City terminate this Agreement due to Contractor’s material breach, City may elect to use the Services for a period of no greater than six (6) months from the date of termination at a reduced rate of twenty (20%) percent off of the then-current Services Fees for the terminated Services. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section shall survive the termination of this Agreement.

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

8.6 Any notice of default must be sent by registered mail to the address set forth in Section 11.1, “Notices to the Parties.”

8.7 **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.

8.8 **Survival.**

8.8.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	9.1	Ownership of Results
3.3.7(a)	Grant Funded Contracts -	9.2	Works for Hire

	Disallowance		
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
4.6	Independent Contractor; Payment of Employment Taxes and Other Expenses	11.8	Construction
Article 5	Insurance; Indemnity and Warranties	11.9	Entire Agreement
6.1	Liability of City	11.10	Compliance with Laws
6.3	Liability for Incidental and Consequential Damages	11.11	Severability
Article 7	Payment of Taxes	13.2.1	Proprietary or Confidential Information of City
8.4	Transition Services and Disposition of Content	13.2.5	Notification of Legal Requests
8.7	Non-Waiver of Rights		

Article 9 Rights In Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

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

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/ .

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

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

10.4 **Reserved.**

10.5 **Nondiscrimination Requirements**

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

10.5.2 **Nondiscrimination in the Provision of Employee Benefits.** Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 **Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. **Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

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

10.8 **First Source Hiring Program.** Reserved

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

10.10 **Limitations on Contributions.** By executing this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. 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. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.11 **Slavery Era Disclosure.** Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor's affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company's Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

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

10.13 **Consideration of Criminal History in Hiring and Employment Decisions**

10.13.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"),

including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

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

10.14 **Public Access to Nonprofit Records and Meetings.** If Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

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

10.16 **Reserved. (Sugar-Sweetened Beverage Prohibition)**

Article 11 General Provisions

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

To City: Treasurer and Tax Collector
Tajel Shah
1 Dr. Carlton B Goodlett Place
San Francisco, CA 94102
Tajel.Shah@sfgov.org
(415)554-4506

To Contractor: CityBase, Inc.,
30 N. LaSalle #3400
Chicago, IL 60602
MDuffy@TheCityBase.com

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

11.2 Compliance with Americans with Disabilities Act. Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement. Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. Sec. 1201 et seq.) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d).

11.3 Reserved.

11.4 Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

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

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the

written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

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

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

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

11.10 **Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

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

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

11.13 **Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated 04/17/2018. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal.

11.14 **Order of Precedence.** Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's

printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

Article 12 Department Specific Terms

12.1 **Reserved.**

Article 13 Data and Security

13.1 **City Data.**

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

13.1.2 **Use of City Data.** Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, including user tracking and exception City Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor or third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

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

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.

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

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

- (i) the nature of the unauthorized access, use or disclosure;
- (ii) the Confidential Information accessed, used or disclosed;
- (iii) the person(s) who accessed, used, disclosed and/or received protected information (if known);
- (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure, and
- (v) what corrective action Contractor has taken or will take to prevent future unauthorized access, use or disclosure.

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

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

- (i) Immediately preserve any potential forensic evidence relating to the breach, and remedy the breach as quickly as circumstances permit;
- (ii) Promptly (within 2 business days) designate a contact person to whom the City will direct inquiries, and who will communicate Contractor responses to City inquiries;
- (iii) As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by the City, and undertake appropriate response activities;
- (iv) Provide status reports to the City on Data Breach response activities, either on a daily basis or a frequency approved by the City;
- (v) Make all reasonable efforts to assist and cooperate with the City in its Breach response efforts;

- (vi) Ensure that knowledgeable Contractor staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach; and
- (vii) Cooperate with City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by City.

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

(e) In the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no fewer than eighteen (18) months following the date of notification to such individuals;

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

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

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

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

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

(k) 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.

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

13.2 **Proprietary or Confidential Information**

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

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

13.2.3 **Nondisclosure.** The receiving Party of proprietary or Confidential Information agrees and acknowledges that it shall have no proprietary interest in the Confidential Information and will not disclose, communicate or publish the nature or content of such information to any person or entity, nor use, except in connection with the performance of its obligations under this Agreement or as otherwise authorized in writing by the disclosing Party, any of the Confidential Information it produces, receives, acquires or obtains from the disclosing Party. The receiving Party shall take all necessary steps to ensure that the Confidential Information is securely maintained. The receiving Party's obligations set forth herein shall survive the termination or expiration of this Agreement. In the event the receiving Party becomes legally compelled to disclose any of the Confidential Information, it shall provide the disclosing Party with prompt notice thereof and shall not divulge any information until the disclosing Party has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by the disclosing Party are unsuccessful, or the disclosing Party otherwise waives its right to seek such remedies, the receiving Party shall disclose only that portion of the Confidential Information that it is legally required to disclose.

13.2.4 **Litigation Holds.** Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including without limitation any retention

schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

13.2.5 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to City's Data under this Agreement, or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to subpoenas, service of process, and other 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.

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

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

13.2.8 Surrender of Confidential Information upon Termination. Upon termination of this Agreement, in whole or in part, each Party shall, within five (5) calendar days from the date of termination, return to the other Party any and all Confidential Information received from the other Party, or created or received by a Party on behalf of the other Party, which are in such Party's possession, custody, or control; provided, however, that Contractor shall return City Data to City following the timeframe and procedure described further in this Agreement. Should Contractor or City determine that the return of any Confidential Information, other than City Data, is not feasible, such Party shall destroy the Confidential Information and shall certify the same in writing within five (5) calendar days from the date of termination to the other Party, pursuant to Article 8 of this Agreement.

13.2.9 Data Security. To prevent unauthorized access or "hacking" of City Data, Contractor shall at all times during the Term provide and maintain up-to-date security with respect to (a) the Services, (b) the Contractor's Website, (c) Contractor's physical facilities, and (d) Contractor's networks. Contractor shall provide security for its networks and all Internet connections consistent with best practices observed by well-managed SaaSs working in the financial services industry, and shall promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. Contractor will maintain appropriate safeguards to restrict access to City's Data to those employees, agents or service providers of

Contractor who need the information to carry out the purposes for which it was disclosed to Contractor. For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., “firewalls,” Transport Layer Security (TLS), Secure Socket Layer [SSL] encryption, or most current industry standard encryption, intrusion prevention/detection or similar barriers) and secure authentication (e.g., password protected) access to the City's Confidential Information and hosted City Data. For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of City Data. City Data classified as Confidential Information shall be encrypted at rest and in transit with controlled access. Contractor shall also establish and maintain any additional physical, electronic, administrative, technical and procedural controls and safeguards to protect City Data that are no less rigorous than accepted industry practices (including, as periodically amended or updated, the International Organization for Standardization’s standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management, NIST Special Publication 800-53 Revision 4 or its successor, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards, or other applicable industry standards for information security), and shall ensure that all such controls and safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement. Contractor warrants to the City compliance with the following (as periodically amended or updated) as applicable:

(a) The California Information Practices Act (Civil Code §§ 1798 et seq):

(b) Compliance with the following, as applicable:

(i) Federal Risk and Authorization Management Program (FedRAMP) certification, where federal funding is involved, and show evidence of having an active compliance program;

(ii) Based upon the City’s classification of Data:

13.2.9.b.ii.1. Relevant security provisions of the Internal Revenue Service (IRS) Publication 1075, including the requirements that Data not traverse networks located outside of the United States;

13.2.9.b.ii.2. Relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCI DSS) including the PCI DSS Cloud Computing Guidelines;

13.2.9.b.ii.3. Relevant security provisions of the Social Security Administration (SSA) Document Electronic Information Exchange Security Requirement and Procedures for State and Local Agencies Exchanging Electronic Information with the Social Security Administration;

13.2.9.b.ii.4. Relevant security provisions of the Criminal Justice Services (CJIS) Security policy.

13.2.9.b.ii.5. Relevant security provisions of the Medi-Cal Privacy and Security Agreement between the California Department of Health Care Services and the County of San Francisco;

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

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

13.2.12 Data Transmission. The Contractor shall ensure that all electronic transmission or exchange of system and application data with City and/or any other parties expressly designated by City shall take place via encrypted secure means (using HTTPS or SFTP or most current encryption methods). The Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of the Contractor. The Contractor shall ensure that no City Data of any kind shall be copied, modified, destroyed, deleted, transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by City. Contractor is prohibited from accessing City Data from outside the continental United States.

13.3 **SSAE 16, SOC 2, Type II Report, and/or SOC 1 Audit Report.**

13.3.1 Contractor shall provide to City, on an annual basis, an SSAE 16, SOC 2, Type II Report, and an SSAE SOC 1 audit report, to be conducted by an independent third party ("Audit Reports") (if Contractor is using a hosting service provider, Contractor shall provide such Audit Reports it receives from its service provider or providers) as follows: (a) the Audit Reports shall include a 365 day (12-month) testing period; and (b) the Audit Reports shall be available to City no later than thirty (30) days after they are received by Contractor. Upon City's written request, Contractor shall provide a so-called "negative assurance opinion" to City as soon as said opinion is received by Contractor. Contractor shall implement reasonably required safeguards as identified by any audit of Contractor's data privacy and information security program. In the event that an annual Audit Report that finds a material data privacy or information security issue, Contractor shall, upon written request by City, provide to City any additional Audit Reports and "negative assurance opinions" as City may reasonably request in order to help enable City to see if Contractor's mitigation measures have been effective in addressing such issue(s).

13.3.2 Audit of Contractor's Policies. Contractor agrees to make its policies, procedures and practices regarding Data Security available to City, if needed, and

agrees that City reserves the rights, including, but not limited to, making a site visit, scanning for malicious codes, and hiring a third-party to perform a security audit if City determines that the SSAE Audit Report is unsatisfactory.

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

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

13.4 **Payment Card Industry ("PCI") Requirements.** Contractors providing services and products that handle, transmit or store cardholder data, are subject to the following requirements:

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

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

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

13.4.4 For items 13.4.1 to 13.4.3 above, Contractor shall provide a letter from their qualified security assessor (QSA) affirming their compliance and current PCI or PTS compliance certificate.

13.4.5 Contractor shall be responsible for furnishing City with an updated level 1 PCI compliance certificate 30 calendar days prior to its expiration.

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.

13.5 **Protected Health Information.** Contractor, all subcontractors, all agents and employees of Contractor, and any subcontractor shall comply with all federal and state laws regarding the transmission, storage and protection of all private health information disclosed to Contractor by City in the performance of this Agreement. Contractor agrees that any failure of Contractor to comply with the requirements of federal and/or state and/or local

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

13.6 **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.

Article 14 Force Majeure

14.1 **Liability.** No Party shall be liable for delay in the performance of its obligations under this Agreement if and to the extent such delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God; riots, civil disorders, or any other cause beyond the reasonable control of such Party (a "Force Majeure Event"). In the case of a Force Majeure Event, Contractor shall immediately commence disaster recovery services as described in Section 14.4.

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

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

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.

Article 15 Appendices

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

15.2 **Appendices:**

- A. SaaS Application & Hosting Services
- B. Service Level Obligations
- C. Disaster Recovery Plan
- D. Business Associate Agreement
- E. Scope of Work
- F. Calculation of Charges
- G. Auto Insurance Waiver

Article 16 MacBride And Signature

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

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

CITY

CONTRACTOR

Recommended by:

CityBase Inc.



Tajel Shah
Chief Assistant Treasurer
Treasurer and Tax Collector

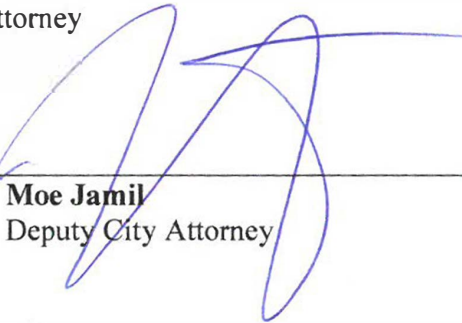
Michael Duffy
CEO
30 North LaSalle Street #3400
Chicago , IL 60602

Approved as to Form:

City vendor number: **1084406**

Dennis J. Herrera
City Attorney

By:



Moe Jamil
Deputy City Attorney

Approved:

for 

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

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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 B. 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 Internet-related technology, within a reasonable time after such technology becomes generally available. In addition, to the extent that any generally available developments, versions, and updates of Internet-related technology make available any new or enhanced features or functionality that can be incorporated into the Hosted Software, Host shall provide Customer the choice to take advantage of such technical developments.

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 role-based controls as they pertain to the SaaS Services. Method will be published through Contractor portal and be made available to Authorized Users with elevated privileges.

D. Back-Up of City's Data:

1. Contractor shall provide up to 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 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 B 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 Back-up environment, Contractor may provide nominal testing to ensure all systems are functional and the revision promotion was successful. Post promotion activities include an e-mail or portal post to serve as written notification that this service has been completed. At the point of e-mail or portal posting, the new revision will be considered “in production” and supported under the maintenance service terms described here within.
- vii. In support of such SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software patches, Contractor shall provide updated user technical documentation reflecting the SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software patches as soon as reasonably practical after the SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches have been released. Updated user technical documentation that corrects 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 B 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 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.

SaaS Severity Level	Target Response Time
SaaS Severity Level 1: <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: < 1 hours. Maximum Permitted Request Resolution Time: < 24 hours</i>
SaaS Severity Level 2: <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: < 2 hours Maximum Permitted Request Resolution Time: < 48 hours</i>
SaaS Severity Level 3: <i>Requires attention –There is a problem or inconvenience. Causes a business impact where</i>	<i>Request Response Time: 1 hr. Request Resolution Time Target: < 4</i>

SaaS Severity Level	<i>Target Response Time</i>
<i>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>hours</i> <i>Maximum Permitted Request Resolution Time: < 96 hours</i>
SaaS Severity Level 4: <i>There is a problem or issue with no loss of service and no business impact.</i>	<i>Request Response Time: 1 hr.</i> <i>Request Resolution Time Target: < 24 hours</i> <i>Maximum Permitted Request Resolution Time: < 4 days</i>

Appendix B Service Level Obligations

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

B. Service Levels.

1. Availability Service Level:

i. Definitions:

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

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

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

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

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

b. Performance Credit.

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

2) Where Percentage Uptime is equal to or less than 99.9%: City shall be due a Performance Credit in the amount of 20% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Uptime.

2. Response Time Service Level.

a. Definition(s).

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

ii. Total Transactions: The total of Transactions occurring in the reporting month.

iii. Transaction(s): Services web page loads, Services web page displays, and Authorized User Services requests.

b. Service Level Standard. Transactions shall have a Response Time of two (2) seconds or less 99.9% of the time each reporting month during the periods for which the Services are available.

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

b. Performance Credit.

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

2) **Where Percentage Response Time is equal to or less than 99%:** City shall be due a Performance Credit in the amount of 20% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Response Time.

3. Technical Support Problem Response Service Level.

i. Definition.

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

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

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

b. Performance Credit.

1) **SaaS Severity Level 1 – 2.**

i) **Where Percentage Problem Response is greater than 99.9%:** No Performance Credit will be due to City.

- ii) **Where Percentage Problem Response is equal to or less than 99%:** City shall be due a Performance Credit in the amount of 20% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.
- 2) **SaaS Severity Level 3 – 4.**
 - i) **Where Percentage Problem Response is greater than 99.9%:** No Performance Credit will be due to City.
 - ii) **Where Percentage Problem Response is equal to or less than 99%:** City shall be due a Performance Credit in the amount of 20% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.

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

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

E. Termination for Material and Repeated Failures. City shall have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this

Agreement and be entitled to a return of any prepaid fees where Contractor fails to meet any service level standards described herein: (a) to such an extent that the City's ability, as solely determined by City, to use the SaaS Services is materially disrupted, Force Majeure events excepted; or, (b) for four (4) months out of any twelve (12) month period.

F. Audit of Service Levels. No more than quarterly, City shall have the right to audit Contractor's books, records, and measurement and auditing tools to verify service level obligations achievement and to determine correct payment of any Performance Credit. Where it is determined that any Performance Credit was due to City but not paid, Contractor shall immediately owe to City the applicable Performance Credit.

Appendix C Disaster Recovery Plan

CityBase maintains a disaster recovery plan that includes steps to ensure the safety of employees, reestablish essential services, and mitigate any impact on customers throughout the emergency condition, disaster declaration, and recovery process.

CityBase uses three fully redundant, geographically remote datacenters to support our merchant processing applications; we have a separate hot site available in a different location. The datacenters are configured to protect our customers from non-catastrophic processing outages, accomplished by using redundant hardware and network connectivity.

Our authorization application software operates in High Availability mode in the datacenters and provides redundant paths for our customers to utilize. All datacenters have direct interfaces to all major networks to provide the fastest and most reliable processing possible. Additionally, these datacenters have multiple internet connections from diverse carriers to provide carrier redundancy

Appendix D Business Associate Agreement

This Business Associate Agreement (“BAA”) supplements and is made a part of the contract (“Contract”)] by and between the City and County of San Francisco, the Covered Entity (“CE”), and CityBase, Inc. (“Contractor”), the Business Associate (“BA”), dated 04/17/2018. To the extent that the terms of the Contract are inconsistent with the terms of this BAA, the terms of this BAA shall control.

RECITALS

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

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

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

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

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

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

1. Definitions.

a. Breach means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed

b. would not reasonably have been able to retain such information, and shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402], as well as California Civil Code Sections 1798.29 and 1798.82.

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

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

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

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

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

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

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

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

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

l. Protected Health Information or PHI means any information, including electronic PHI, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the

information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Sections 160.103 and 164.501. For the purposes of this BAA, PHI includes all medical information and health insurance information as defined in California Civil Code Sections 56.05 and 1798.82.

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

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

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

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

2. Obligations of Business Associate.

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

b. Permitted Disclosures. BA shall disclose Protected Information only for the purpose of performing BA's obligations for or on behalf of the City and as permitted or required under the Contract and BAA, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2 (m) of this BAA, to the

extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)]. BA may disclose PHI to a BA that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit Protected Information on its behalf, if the BA obtains satisfactory assurances, in accordance with 45 C.F.R. Section 164.504(e)(1), that the subcontractor will appropriately safeguard the information [45 C.F.R. Section 164.502(e)(1)(ii)].

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

d. Appropriate Safeguards. BA shall take the appropriate security measures to protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the CE, and shall prevent any use or disclosure of PHI other than as permitted by the Contract or this BAA, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.306, 164.308, 164.310, 164.312, 164.314 164.316, and 164.504(e)(2)(ii)(B). BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316, and 42 U.S.C. Section 17931. BA is responsible for any civil penalties assessed due to an audit or investigation of BA, in accordance with 42 U.S.C. Section 17934(c).

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

f. Accounting of Disclosures. Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six (6) years prior to the request.

However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure [45 C.F.R. 164.528(b)(2)]. If an individual or an individual's representative submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five (5) calendar days.

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

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

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

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

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

l. Notification of Breach. BA shall notify CE within 5 calendar days of any breach of Protected Information; any use or disclosure of Protected Information not permitted by the BAA; any Security Incident (except as otherwise provided below) related to Protected Information, and any use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BA to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 42 U.S.C. Section 17932; 45 C.F.R. 164.410; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]

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

3. Termination.

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

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

c. Effect of Termination. Upon termination of the Contract and this BAA for any reason, BA shall, at the option of CE, return or destroy all Protected

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

d. Civil and Criminal Penalties. BA understands and agrees that it is subject to civil or criminal penalties applicable to BA for unauthorized use, access or disclosure of Protected Information in accordance with the HIPAA Regulations and the HITECH Act including, but not limited to, 42 U.S.C. 17934 (c).

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

4. Amendment to Comply with Law.

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

5. Reimbursement for Fines or Penalties.

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

Appendix E
Scope of Work

CityBase Scope of Work

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CityBase Platform

CityBase provides payment solutions via a software as a service (SaaS) platform that includes all required technological functionality and is accessible via all payment channels. We integrate the platform to all underlying systems of record, billing, and other source systems, and configure payments and digital services to meet the requirements of CCSF.

CityBase will be hosting all CCSF payments and digital services migrated to the CityBase platform, and assumes all responsibility for maintenance, reliability, PCI compliance, and data encryption functionality of the systems. We require no infrastructure, hardware, or software from CCSF—only access to the systems you want exposed. There are no requirements for network connectivity other than browser-based client-facing functionality, while back-end integrations require secured access to those systems.

Section 4-6 describe the core functionality of the CityBase platform. We will inform CCSF of the platform roadmap at regular intervals.

PCI Compliance

CityBase will maintain PCI Level 1 Compliance (in all Payment channels) as outlined by the PCI Security Standards Council and provide support and guidance to minimize City PCI Scope and compliance costs. CityBase will collaborate with City and the City Banking Partners to increase the level of safeguarding constituent data through increased use of encryption, modern security methods, and device selection. The City will provide access to resources and appropriate parties including City and City banking partner systems, business owners, and technical resources.

CityBase does not store, or otherwise write, cardholder data to disk. CityBase relies heavily on tokenization to ensure that no CityBase systems ever store sensitive cardholder data.

The CityBase platform uses real-time alerting on system events that may be security-related, as well as any changes to our cloud computing environment. In addition to CityBase's monitoring and detection controls, all transaction data is secured using end-to-end encryption.

CityBase performs regularly scheduled internal and external penetration scans by qualified third parties of systems, and applications. To ensure the physical security of our platform, CityBase has made Amazon Web Services (AWS) its cloud provider of choice. AWS provides CityBase with resilient cloud infrastructure, which is hosted in an independently managed datacenter which carries an ISO 270001 certification, in addition extensive network, and physical security controls.

CityBase is a certified Level 1 payment processor. We work closely with an independent third-party team of PCI Qualified Security Assessors to ensure that all cardholder data which enters, and traverses CityBase network systems, is doing so in a way that strictly adheres to the standards and requirements, as defined by the Payment Card Industry Data Security Standard (PCI DSS).

Description of Work to be Performed

CityBase will provide to the City and County of San Francisco (hereafter “CCSF” or “the City”) payment services to enable CCSF departments and agencies to accept payments through various channels. Through its platform, products, and services CityBase will provide to CCSF the public-facing user interface of payments, the required integrations to CCSF source systems, administrative functionality, payment processing, and reporting and reconciliation. In addition, CCSF can leverage the CityBase platform to digitize services such as searches, submissions, registrations and other common government user actions required for and related to payment.

Project Management & Implementation

CityBase implementations are built on an iterative approach where development cycles and sprints define priorities, drive work, and generate deployments approximately every six weeks. Configurations, integrations, new channel deployments, content, and digital services are completed using the process below. Changes requests to core CityBase products are prioritized and completed using the below approach but are also subject to additional assessment and steps outlined below.

Stage	Activity	Notes	Estimated Duration
Pre-Release	Initial Discovery	<ul style="list-style-type: none"> Defining high-level objectives (review the implementation road map) Agreeing the right resource mix and timelines 	3 days
Foundations	Project Planning Sprint Planning	<ul style="list-style-type: none"> Write your mission statement Launchpad training/demo Product configuration specifications & writing user stories Prioritization of user stories Design sign-off Planning / estimating effort Sprint bucket planning 	3 days
Implementation	Sprint 1	<ul style="list-style-type: none"> Daily scrum team 	20 days

	Sprint 2 All Sprint Retrospective Test Planning	<ul style="list-style-type: none"> standups during each sprint Sprint reviews and sprint re-planning after each sprint ASR after all sprints and test planning 	(Two 10-day sprints)
Test	UAT1 Fix UAT 2 Performance Test	<ul style="list-style-type: none"> User Acceptance Testing (UAT) Performance Testing 	10 days (One 10-day sprint)
Deployment	Hypercare	<ul style="list-style-type: none"> Monitoring 	30 days

New Feature Requests

In cases where CCSF requests a change to core product features, CityBase will assess for product roadmap alignment and, where applicable, provide a development estimate and will invoice on a per hour basis. Once this request and development estimate are mutually agreed by CCSF and CityBase, the request enters the normal sprint planning cycle process above.

Implementation Ceremonies

The following meeting types or “ceremonies” offer frequent decision points to ensure the project stays on track, while allowing greater client visibility into future roadmap and supporting an agile build and release cycle.

Ceremony	Frequency	Purpose
Initial Discovery	Before the start of the cycle	Identify stakeholders, decision makers and discuss high-level scope
Kick-off	Before the start of the cycle	Introduce all stakeholders and review high-level scope Demo product features
Design Discovery	Before the start of the cycle	Determine product configuration specifications and write user stories
Design Review	Before the start of the cycle	Agree on requirements and design
Cycle Planning	First week of cycle	Define scope for cycle Plan for known dependencies and release activities
UAT Check Ins	Daily in the last two weeks of the Cycle	Review UAT Feedback Discuss open issues and plan for resolution
Pre-Release Call	Friday before Release	Go / No-go decision for planned Release Finalize Release timing
Production Handoff	Two weeks after Release	Hand off process for Implementation team to Production Support
Steering Committee Check In	Once per cycle	City of San Francisco / CityBase engagement strategic planning
Team Lead / Sprint Review Meeting	At the end of each sprint	Each individual cycle weekly status meeting
All Sprint Retrospective	At the end of each cycle	Review the progress made in each cycle, lessons learned, re-prioritize the roadmap

Ongoing Project Activities

The following activities will happen on a recurring basis regardless of ongoing or upcoming Implementation Cycles.

Activity	Frequency	Purpose
Standups	Daily	Status updates from CityBase and CCSF Identification of blockers / issues
Status Report	Weekly	Provide list of impediments/issues, risks and overall project status
Project Meeting	Weekly	Weekly touch point for project

Staff Training

The CityBase platform is designed to be user-friendly and intuitive; however, thorough training of City staff is essential for a quick adoption of the system.

- CityBase will offer trainings to City employees during implementation
- CityBase will provide user documentation and instructional materials detailing procedures for using full functionality provided in the application.

CityBase Roles & Responsibilities

Engagement Team

- Vice President (VP) of Civic Engagement — Executive point of contact responsible for CityBase team and performance.
- Senior Engagement Manager — Responsible for strategic vision and direction for the CCSF engagement. Manages steering committee and project governance.

Project Team

- VP of Operations — Technical lead for the project. Maintains agile process and technical resources.
- Project Manager and Scrum Master — Leads agile methodology ceremonies including cycle planning and sprint meetings.
- Product Subject Matter Expert (SME) — Provides product and technology expertise. Advise sprint meetings and facilitate software development tasks in each sprint.

- Software Developers — Complete product updates including new functionality, bug fixes, and integrations.
- Technical Implementation Consultants — Collect CCSF business rules, and configure CityBase products to match CCSF specifications.
- User Experience (UX) Designers — Subject matter experts in web and human-centered design. Responsible for the overall look and feel of CityBase products.
- Quality Assurance (QA) Specialists — Perform testing for each new release and responsible for ensuring code updates remain stable in production.
- Tier 2 and 3 Customer Support — Provide product support to CCSF staff via phone and email. Track and resolve support tickets through CityBase ticket management system.

CCSF Roles & Responsibilities

Certain data, documentation, and integration assistance ensures CityBase products are efficiently deployed and correctly configured. CCSF will dedicate resources, including an executive sponsor, key points of contact, and day-to-day project management to support the successful configuration and deployment of CityBase products.

The following project roles and responsibilities are suggested for CCSF to align with CityBase roles outlined above.

Steering Committee (Long Term):

- Executive Sponsor from CCSF. Responsible for strategic direction and point of escalation.
- Committee members. Ideally 6-7 executive-level stakeholders and representatives that meet regularly to review project progress and guide strategic direction.

Project Team (During Project-Short Term):

- Project Sponsor — Champion for the project in CCSF and business owners. Drives continued progress and serves as a technical point of escalation.
- Project Manager — Monitors day-to-day project progress and serves as main project point of contact. Leads coordination of other CCSF business owners, IT, and Customer Support Lead.
- Business Owners — Designated agency/department serves as point of contact for project and advocates for agency/department goals in alignment with project progress.
- Technical SMEs — Technical liaisons assigned to and/or across relevant agency/departments.
- Customer Support Lead — Track and resolve client and end user inquiries and requests for constituent support in coordination with CityBase support.

Channel-Specific Responsibilities

To support deployment of the payment channels described above, the following responsibilities are required for web/mobile channels:

Web/Mobile

CCSF

- Provides access to required CCSF source systems, business owners, and technical resources.

CityBase

- Ensures mobile responsiveness for all screen sizes including smartphone, tablet, and desktop web browsers and will be 508 Compliant.
- Maintains compatibility and optimizes user experience for all web and mobile web browsers that have more than 5% U.S. market share as measured by <http://gs.statcounter.com/>.
- Provides training and education to CCSF staff as needed to support payment services.

Source System Integrations

CCSF

- Shares complete API/Form Post/Batch Import documentation with CityBase, where appropriate, and, in cases where API/Form Post/Batch Import Post documentation is unavailable, writes API/Form Post documentation.
- Reviews API/Form Post/Batch Import and works with CityBase to answer open questions.
- Provides access to required databases.
- Supports business process research, and ensures appropriate business rules are documented.

In the event that CityBase needs to integrate with a third-party vendor, CityBase's preferred approach is to provide the vendor a technical requirements checklist of credentials and specifications. CCSF is responsible for:

- Confirming vendor is ready to work with CityBase, has staff available to answer API/Form Post/Batch Import questions, and is open to allowing CityBase to collect required data and submit data to the vendor through an API/Form Post/Batch Import call.
- Confirming non-disclosure agreement and required contract amendments are in place.
- Identifying and resolving third-party vendor constraints (performance traffic)
- Obtaining and sharing third party vendor API/Form Post/Batch Import.

Payment Acceptance

CityBase facilitates payments as native to CCSF's digital infrastructure and as an integral and inseparable facet of government service delivery. Features and details of payment acceptance include the following.

Payment Types

The CityBase platform supports the following payment types across payment channels:

- one-time payments
- enrolled payments
- scheduled payments
- recurring payments

Shopping Cart

The shopping cart feature allows constituents to make multiple payments and checkout in one process. CityBase can allocate funds into multiple ACH records as desired and assist with back office process design to support consolidation of debt and payment plans.

Notes:

- **Deployment method:** CityBase will deploy payments natively onto the CCSF domain, without PCI exposure. Methods include mapping a subdomain (pay.sftreasurer.org), mapping a branch (myaccount.sftreasurer.org/pay), or extending our payment API via JavaScript with code snippets deployed to the preferred domain.
- **Stored payment method and recurring payments:**
 - Requires only the identifying information on the account
 - CB stores only details related to the transaction, including but not limited to:
 - amount processed
 - masked credit card data
 - masked ACH account data
 - credit card token data for recurring transactions
 - date and time
 - full record of all API requests and responses made and received in connection with a given transaction.
 - Administrative access to the CityBase platform allows customer service representatives (CSRs) to create accounts for and enroll constituents in subscription billing and recurring payments — information is reflected in real time the CityBase platform for both the constituent and the CSR.
- **Payment plans:** The CityBase dashboard provides CCSF with constant monitoring of the payment plan process to evaluate their effectiveness and usage.

Payment Rules

CityBase will enforce payment rules, including

- Exact payment

- Over payments
- Partial payments
- Flat rate service fees
- Percentage based service fees

Tender Types

- Credit card: VISA, MasterCard, Discover and American Express
- Debit card (Pin-Less)
- Electronic Check

Payment Settlement

CityBase, in coordination with the CCSF banking partner and merchant acquirer, will settle funds on a next-day(after initial credit card transactions) basis to CCSF bank accounts. CityBase will configure multiple merchant IDs and multiple settlement processes to closely align with agency business practices. Batch periods can be closed manually (by Citybase) or automatically. In coordination with CCSF banking partner, same-day ACH will allow for faster settlement of ACH funds. CityBase will advise CCSF on the most appropriate strategy to take advantage of this industry shift while preserving the integrity of legacy source systems. Successful and failed transactions are posted back to CCSF in real-time. CityBase will securely integrate into all relevant datasets and source systems to provide constituents real-time information and ensure that source systems are always current. For legacy source systems that are limited to batch processing, CityBase will maintain interim transaction data to ensure the constituent continues to view real-time data. CityBase will also ensure that all constituent interactions, regardless of channel use real-time information.

Settlement of electronic checks

E-Check processing and real-time validation of bank routing number and/or bank account number used through a verification service. In addition, the e-check verification can warranty the check so that if a check is NSF, the e-check verification will warranty the amount so that CCSF does not have to reverse the transaction or collect funds from the constituent.

Chargeback and refunds

- **Electronic checks — NSFs and returns:** if CCSF opts for CityBase to process through an acquiring bank such as First Data, returns will be posted in batch in weekly offsets.
- **Global Transaction IDs:** Global transaction IDs are attached to and follow transactions through reconciliation for quick research and identification. Reconciliation information provided to CCSF includes settlement identifier and amount, transaction detail numbers, amounts, and payment coding, and any relevant batch information. We will work with CCSF to automate the submission of refuting evidence in chargebacks and the resubmission of returned ACH payments.

- **Reporting failed payments, refunds, NSFs:** Reject information will be posted to the CityBase reporting dashboard as received. CityBase will associate the rejected payment with the correct transaction and original deposit dates, such that CCSF can see the actual bank data balance amount for reconciliation, and also observe the transaction date balance amount. Exact functionality will be determined along with selection of e-check settlement method by the City in consultation with CityBase. Two files will be created (e-check, chargebacks) will be created to help track reversal.
- **Preventative tender type restrictions:** CityBase will provide standard protection against fraud by monitoring and throttling velocity. The platform will restrict the repetitive use of the same payment instrument within a 24-hour period and scanning for anomalous behavior patterns. Optionally, we can leverage First Data Merchant Services who provides the largest negative check and ACH file in the industry, as well as the largest and most accurate positive data files.

Data Security

CityBase is dedicated to maintaining and constantly improving a multi-faceted security program to support our platform, and the people and businesses that rely on it.

Beyond our security obligations as a PCI Level-1 Compliant payment processor, CityBase exceeds the security criteria set forth by the PCI Data Security Standard.

We use next-generation cloud security monitoring and alerting for all critical infrastructure components and payment systems, including Threat Stack, CrowdStrike, and the ELK Stack. We focus on rapid response to risks and potential threats with an enterprise threat-detection and response framework crafted from industry-leading commercial and open-source technologies. CityBase monitors for new vulnerability notifications and checks our systems against affected components, across all servers, endpoints, and network devices. We leverage these security events and log data from within our environment to gain actionable threat intelligence and visibility into suspicious processes and behaviors.

Reporting and Reconciliation

CityBase provides dashboards that allow CCSF to track payments near real time while providing custom reports. These dashboards facilitate day-to-day operations by tracking transactions, revenue, and other data. Dashboards are accessible via web browser, or can be exported using standard data formats.

CityBase also provides dashboards to show high-level trends across the payment platform. These dashboards provide aggregate transaction data across different debt types or departments including transaction lists, interaction data, and payment totals.

CityBase will configure dashboards to facilitate efficient account reconciliation review, integrating third-party payment files, and creating a single point of reconciliation. These reports can be leveraged along with auto-repost functionality and CityBase global transaction ID will follow individual payment through to settlement and streamline reconciliation processes.

CityBase will provide at-a-glance dashboard visualizations for transactional data aggregated in any format requested by CCSF, including:

- Range of dates for the reporting period
- Dates and time of day when transaction occurred
- Location where transaction occurred
- Number of transactions made, by payment type
- Which transaction resulted in an error
- Number of errors made
- Number of reported problems
- Time of downtime incurred
- (Where relevant) armored car pick-ups and totals
- Total amount of payments made

CityBase will configure user accounts to an initial group of CCSF personnel as identified by CCSF. Appropriate members of that group will be trained on how to manage users on an ongoing basis.

Access	User Limit	Description
Agency Access	No Limit	View / Export all reports for assigned agency
Admin Access	10	View / Export all CCSF agency reports View / Export summary reports across agencies Configure new reports

CityBase will provide CCSF with online access to real-time, daily, and monthly reconciliation reports to allow CCSF personnel to account for and reconcile receipts collected through the system. The following is a list of standard reports available to CCSF. In addition to the reports listed below, custom reports can also be configured by authorized users.

- Global view of all CCSF transaction activity
- Batch and detail reports (for product and merchant) for each settlement batch
- Ad hoc reporting
- Reconciliation reports
- Consolidated monthly summary report
- Transaction summary by store/date/card type
- Transaction summary by store/date
- Transaction summary by merchant/date/card type
- Transaction summary by merchant/date
- Interchange qualification report with fees
- Credit card detail by date
- Credit card detail by store/terminal/date
- Credit card detail by store/date
- Debit card detail by store/date

- Debit card detail by store/terminal/date
- Debit card summary by store/terminal/date
- Debit card summary by merchant/date
- Debit card summary by network
- Debit card detail by network/date
- Bank deposit by store/day
- Bank deposit by day
- Returns without matching sale (issuing credit has offset debit)
- Loss prevention report with all chargebacks by reason codes
- Cash management report with deposits, credits, chargebacks, retrievals, adjustments, and funded amounts
- Raw data reports or financial activity file that can be used as input to an automated ledger system or generate customized reports

CityBase will configure user accounts to an initial group of CCSF personnel as identified by CCSF. Appropriate members of that group will be trained on how to manage users on an ongoing basis.

Access	User Limit	Description
Reconciliation Access	10	View transaction status across all agencies

Channels

CityBase will provide CCSF with industry-leading, constantly modern technology across the required online payment channels. Our payment channels provide the best possible user experience and natively incorporating the CCSF style guide. All payment channels are expressed from a centralized payment platform so that users access the same information in real time. This ensures consistency for constituents and encourages them to migrate to the most modern and two-directional channels.

Responsive Web

The CityBase platform includes a CCSF-branded user interface that is intended to become native to the CCSF digital ecosystem. The CityBase user interface provides a consistent look and feel for payments and related-services across multiple CCSF agencies. As a container for payments and digital services, it provides constituents the necessary orientation to find the services they need and gives them an easy and reliable way to consume information. The CityBase user interface includes:

- Payment-related landing pages
- Payment-related web pages
- Embedded payment and payment-related forms where CCSF prefers to maintain an existing web page
- Navigation and navigational features as required to improve access to payments and payment-related services

Text and Email

CityBase Text and Email is seamlessly integrated with all payment channels. After a transaction, constituents will receive their receipt by text/email. Agencies can send service alerts or payment reminders. The CityBase platform makes it easy to configure all text, user prompts, and functionality. A text/email notification will be generated for payment failures.

Supporting Services

CityBase will implement the following services which support channel and application function and adoption.

Back-End Integration

CityBase specializes in direct integration of the CityBase platform to disparate source systems, by using existing APIs or creating new ones as needed. CityBase will provide real-time API integration to the CCSF source systems that can accept a real-time integration using the CityBase Unified API layer.

- Interactions:
 - Support form posts, APIs, and web calls back and forth between CityBase applications and CCSF subsidiary systems
- Required systems:
 - Agency source systems with data required for payments and payment-related digital services
- Level of documentation:
 - Documented web service
 - Unsupported web service*
 - Direct database with documentation*
 - Direct database without documentation*
 - Flat file**

*Requires support from client technical resources or third-party technical resources (where the third-party is managed by client).

**Limits functionality.

Optional Services

CityBase will provide to any participating CCSF agency or department the following optional services.

Digital Services – Screendoor

CityBase digital services are configurable digital forms, that replace manual processes or improve existing online processes. By making it easier for constituents to register, apply, search,

and pay for services—and easier for staff to administer these services—CityBase digital services reduce end-to-end processing time from days to minutes. They are designed for optimal user experience and consistency across all CCSF payments and related services. These may require integration to underlying source systems, or to the CityBase response dashboard.

The CityBase form builder and response dashboard help teams streamline the process behind online forms, delivering government services for less time at lower cost. You can publish online forms, manage and rate responses, discuss them with your team, provide support to respondents, and automate your workflows. It's all with a flexible, secure, cloud-based, solution that's tailored especially to government.

Content Development

As mutually agreed, to meet the objectives of the engagement, CityBase may develop content as needed to support use of payments and digital services. The primary purpose of content developed within this engagement will be to provide information required by the constituent to successfully complete a payment or a digital service related to a payment. Content for common government services may be sourced from and maintained in the CityBase content library. Types of content may include:

- Introduction copy
- Instructional copy
- Confirmation copy
- Contact information

Customer Support

CityBase Customer Support is provided in three levels: Standard, Gold, and Platinum. CCSF will receive the Platinum level.

Features	Platinum
Online ticket creation	✓
Weekday coverage 9:00am – 5:00pm CST	✓
Acknowledgement of issue within 30 mins	✓
Health checks & preventative system updates	✓
Self-help hardware resources support	✓
Webcast product training	✓
Customized user dashboard	✓
Onsite product training – 1 visit	✓
Onsite product training – 2 visits	✓
Dedicated phone number for Support	✓

Development escalation priority	✓
Post-incident report requests	✓

- SLA is 99.9% for all payment channels
- CityBase provides support during regular business hours (6:00AM-6:00PM PST) and after hours on-call coverage for Platinum customers.
- CityBase determines severity level and priority based on criteria as outlined.
- Stated SLAs do not apply outside of regular business hours, except for “Critical” severity level issues which will be addressed on a 24x7 basis.
- Stated SLAs do not apply to force majeure issues.12A. Software SLA Response & Resolution Times

Software SLA Response & Resolution Times

Issue Level	Definition	Update Frequency	Path to Resolution
		Platinum	Platinum
Critical	Critical Business Impact: All payment channels unavailable in any one (1) location where no other location is available within two (2) miles; all lookup methods unavailable; unable to process all payment types; payments improperly posting for five (5) or more users within one (1) business day; significant account reconciliation issues	1 hour	1 day
Major	Major Business Impact: More than one (1) payment channel unavailable in any one (1) location where no other location is available within two (2) miles; unable to process multiple payment types; payments improperly posting for four (4) or fewer users within one (1) business day; minor account reconciliation issues	2 hours	2 days
Medium	Normal Business Impact: One (1) payment channel unavailable in any one (1) location; one (1) lookup method unavailable; unable to process one (1) payment type; payments improperly posting for one (1) user.	4 hours	3 days
Low	Minimal Business Impact: question, comment, feature request, documentation issue or other non-impacting issue.	24 hours	4 days

Cloud Hosting and Redundancy

Our database and transaction server are hosted in an Amazon Web Services (AWS) cloud instance, providing unlimited bandwidth, storage, and processing power that self-scales real-time in response to the City's payment volume. Amazon Web Services (AWS) is an independently managed datacenter that is ISO27001 certified with extensive network physical security controls.

CityBase uses three fully redundant, geographically remote datacenters located in Ohio, northern California, and Oregon to support our merchant processing applications; we have a separate hot site available in a different location. The datacenters are configured to protect our customers

from non-catastrophic processing outages, accomplished by using redundant hardware and network connectivity.

Our authorization application software operates in High Availability mode in the datacenters and provides redundant paths for our customers to utilize. All datacenters have direct interfaces to all major networks to provide the fastest and most reliable processing possible. Additionally, these datacenters have multiple internet connections from diverse carriers to provide carrier redundancy.

Appendix F Calculation of Charges

Tier-Based Pricing

Tier-Based Transaction Costs

	Transaction Volume
Tier 1 (Current Tier With Optional)	Greater than 750,000
Tier 2	500,000-750,000
Tier 3(Current Tier without optional)	250,000 - 500,000
Tier 4	0 - 250,000

Payment Type	Section A. Consumer Program Applications Such as Property Taxes*		Section B Business/Commercial Applications Such as Licensing and Registration*		Section C Non-Tax Programs Such as Donations*
	Tier 1: City Pays Service Fee	Tier 1: Payer Pays Service Fee	Tier 1: City Pays Service Fee	Tier 1: Payer Pays Service Fee	Tier 1: City Pays Service Fee
Credit Card**	2.15%/\$2.00 min	2.25%/\$2.00 min	2.40%/\$2.00 min	2.50%/\$2.00 min	2.10%/\$2.00 min
Debit Card**	2.15%/\$2.00 min	2.25%/\$2.00 min	2.40%/\$2.00 min	2.50%/\$2.00 min	2.10%/\$2.00 min
eCheck	\$0.14	\$0.14	\$0.14	\$0.14	\$0.14

**See table below for proposed special pricing for small ticket items such as metered parking and transit

Payment Type	Section A. Consumer Program Applications Such as Property Taxes		Section B Business/Commercial Applications Such as Licensing and Registration		Section C Non-Tax Programs Such as Donations
	Tier 2: City Pays Service Fee	Tier 2: Payer Pays Service Fee	Tier 2: City Pays Service Fee	Tier 2: Payer Pays Service Fee	Tier 2: City Pays Service Fee
Credit Card	2.15% / \$2.49 min	2.25%/\$2.49 min	2.40% / \$2.49 min	2.50%/\$2.49 min	2.10% / \$2.49 min
Debit Card	2.15% / \$2.49 min	2.25%/\$2.49 min	2.40% / \$2.49 min	2.50%/\$2.49 min	2.10% / \$2.49 min
eCheck	\$0.14	\$0.14	\$0.14	\$0.14	\$0.14

Payment Type	Section A. Consumer Program Applications Such as Property Taxes		Section B Business/Commercial Applications Such as Licensing and Registration		Section C Non-Tax Programs Such as Donations
	Tier 3: City Pays Service Fee	Tier 3: Payer Pays Service Fee	Tier 3: City Pays Service Fee	Tier 3: Payer Pays Service Fee	Tier 3: City Pays Service Fee
Credit Card	2.20% / \$2.49 min	2.25%/\$2.49 min	2.45% / \$2.49 min	2.50%/\$2.49 min	2.15% / \$2.49 min
Debit Card	2.20% / \$2.49 min	2.25%/\$2.49 min	2.45% / \$2.49 min	2.50%/\$2.49 min	2.15% / \$2.49 min
eCheck	\$0.14	\$0.14	\$0.14	\$0.14	\$0.14

Payment Type	Section A. Consumer Program Applications Such as Property Taxes		Section B Business/Commercial Applications Such as Licensing and Registration		Section C Non-Tax Programs Such as Donations
	Tier 4: City Pays Service Fee	Tier 4: Payer Pays Service Fee	Tier 4: City Pays Service Fee	Tier 4: Payer Pays Service Fee	Tier 4: City Pays Service Fee
Credit Card	2.25%/\$2.49 min	2.25%/\$2.49 min	2.50%/\$2.49 min	2.50%/\$2.49 min	2.20%/\$2.49 min
Debit Card	2.25%/\$2.49 min	2.25%/\$2.49 min	2.50%/\$2.49 min	2.50%/\$2.49 min	2.20%/\$2.49 min
eCheck	\$0.14	\$0.14	\$0.14	\$0.14	\$0.14

B. For other Services Offered Such as Chargebacks, Validation Fees, Return Check, Application Setup, Custom Development, Optional Digital Products, etc. Please Use the Box Below to List Other Fees to be Paid by the City

Ancillary/Other Fees Paid by City	
Service	Associated Fees
Validation of Checking Account Routing Transit Number	TBD-Processor Specific
Validation of Checking Account Number	TBD-Processor Specific
Chargeback	\$9.95
Return Checks	\$6.95
Custom Development Rate	195.00/hr.
Other (one time setup fees, etc.)	

Special Pricing for Small Ticket Price Items

Payment Type	Special Pricing for Small Ticket Program**
	Tier 4: City Pays Service Fee
Credit Card	[Cost of Interchange] +\$0.14
Debit Card	[Cost of Interchange] +\$0.14
eCheck	\$0.14

Payment for Tier-Based Pricing

For “Payer Pays” transactions, CityBase will retain the service fees to cover the costs of processing and its own services. In addition, CityBase will submit a monthly report to CCSF of total funds, delineating between service fees and principal fees.

For “City Pays” transactions, CityBase will invoice CCSF or the Agency on a monthly basis. CityBase can also auto-debit a CCSF/Agency account, as preferred.

Small-Ticket Pricing

Small-Ticket Transaction Pricing

Special Pricing for Small Ticket Price Items

Payment Type	Special Pricing for Small Ticket Program**
	Tier 4: City Pays Service Fee
Credit Card	[Cost of Interchange] +\$0.14
Debit Card	[Cost of Interchange] +\$0.14
eCheck	\$0.14

Payment for Small-Ticket Items

For “City Pays” transactions, CityBase will invoice CCSF or the Agency on a monthly basis. CityBase can also auto-debit a CCSF/Agency account, as preferred.

Pricing for SFMTA metered parking

Monthly Pricing for San Francisco Municipal Transportation Agency Metered Parking

Payment Type	Monthly Pricing for SFMTA metered Parking**
	City Pays Service Fee
Credit and Debit Card: Interchange	Cost of Interchange*
Credit and Debit Card: Gateway Fee	\$0.14 per transaction, capped at \$40,000/month**
eCheck	\$0.14 per transaction

*As reflected on merchant statements, includes acquiring fees

**On mutual agreement, will raise to \$50k contingent on removal of PBP downgrade fees

Payment for SFMTA Metered Parking

For payment of SFMTA monthly flat rate and interchange costs, CityBase will invoice SFMTA on a monthly basis. CityBase will provide merchant statements with the monthly invoice. CityBase can also auto-debit a CCSF/Agency account, as preferred.

Integrations and Solutions Pricing

Integration Costs

One-time professional services fee by complexity, based on RFP pricing of \$195/hour

- ❖ Low Complexity: No cost
 - Stable source system
 - Documented web service
 - Replaces existing integration
 - User actions: submit

- ❖ Medium Complexity: Fixed fee of \$10,000
 - Stable source system
 - Unsupported web service
 - Direct database with documentation
 - User actions: submit, search
- ❖ High Complexity: Flat fee based on estimated scope at \$195/hour
 - Direct database without documentation
 - Third-party system that is not yet configured, does not have an API, or requires a scope change with the vendor or outstanding system or tool dependencies
 - Database that is in the middle of being procured, built or migrated
 - User actions require new functionality or complex business logic

Implementation Solution

Gateway

- ❖ No cost for implementation and continued maintenance
- ❖ No cost for dashboard and accounting portal
- ❖ No cap on Merchant IDs
- ❖ Integration of data is low complexity
- ❖ Transaction costs: see charts above based on total CCSF volume

Digital Services

- ❖ \$12,000 annual per digital service; prorated based on go-live date
- ❖ May include integration costs
- ❖ Includes existing product features, new features, and future enhancements
- ❖ Includes license to administrator toolkit (Screendoor)
 - Response Dashboard / Constituent Response Manager
 - Form builder for form editing by CCSF staff
 - Unlimited seats for CCSF staff

Payment for Integrations and Solutions

For license costs and professional services costs, CityBase will invoice CCSF or the Agency on a monthly basis. CityBase can also auto-debit a CCSF/Agency account, as preferred.



March 8, 2018

Luke Forbing – VP of Finance
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#TTX2017-08) 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,

A handwritten signature in black ink, appearing to read 'L. Forbing'.

Waiver of Automobile Liability insurance is hereby granted based on statement presented on this letter.

A handwritten signature in blue ink, appearing to read 'E. Fitzgerald'.

Elizabeth Fitzgerald
Risk Management
3/14/18