File No.   **211228**   **Committee Item No.**   **2**
                                     Board Item No.   _____

COMMITTEE/BOARD OF SUPERVISORS
AGENDA PACKET CONTENTS LIST

Committee: Budget and Finance Committee   **Date** January 12, 2022
Board of Supervisors Meeting   **Date** _____

Cmte Board

Cmte	Board	
☐	☐	**Motion**
☒	☐	**Resolution**
☐	☐	**Ordinance**
☐	☐	**Legislative Digest**
☒	☐	**Budget and Legislative Analyst Report**
☐	☐	**Youth Commission Report**
☐	☐	**Introduction Form**
☒	☐	**Department/Agency Cover Letter and/or Report**
☐	☐	**MOU**
☐	☐	**Grant Information Form**
☐	☐	**Grant Budget**
☐	☐	**Subcontract Budget**
☒	☐	**Contract/Agreement**
☒	☐	**Form 126 – Ethics Commission**
☐	☐	**Award Letter**
☐	☐	**Application**
☐	☐	**Public Correspondence**

OTHER   **(Use back side if additional space is needed)**

Cmte	Board	
☐	☐	_____
☐	☐	_____
☐	☐	_____
☐	☐	_____
☐	☐	_____
☐	☐	_____
☐	☐	_____
☐	☐	_____
☐	☐	_____
☐	☐	_____

Completed by: Brent Jalipa   **Date** January 7, 2022
Completed by: Brent Jalipa   **Date** _____

1   [Contract - Intervision Systems LLC - Networking Equipment - Not to Exceed
     $40,000,000]
2

3   **Resolution authorizing the Office of Contract Administration to enter into**

4   **PeopleSoft Contract ID 1000023748 between the City and County of San**

5   **Francisco and Intervision Systems LLC for the purchase of networking**

6   **equipment, software and hardware/software support manufactured by Juniper**

7   **Networks Inc., with a contract not to exceed amount of $40,000,000 and a total**

8   **contract duration of five years commencing on February 1, 2022, through**

9   **January 31, 2027.**

10

11   WHEREAS, Charter, Section 9.118(b), requires the Board of Supervisors to

12   approve by Resolution contracts estimated to cost the City $10,000,000 or more; and

13   WHEREAS, The contract referenced above is on file with the Clerk of the Board of

14   Supervisors in File No. 211228, which is hereby declared to be part of this Resolution as

15   if set forth fully herein; and

16   WHEREAS, This Contract was competitively procured as required by

17   Administrative Code, Chapter 21.1, through an Invitation for Bids issued by the Office of

18   Contract Administration on September 20, 2021, under Sourcing Event 0000005930 for

19   the purchase of networking equipment, software and hardware/software support

20   manufactured by Juniper Networks Inc. (Aggregate 1); Hewlett Packard Enterprise

21   Company (Aggregate 2) and Aruba Networks (Aggregate 3); and

22   WHEREAS, Sourcing Event 0000005930 resulted in the award of Aggregate 1 to

23   Intervision Systems LLC as the lowest responsive bidder (PeopleSoft Contract ID

24   1000023748); and

25

1   WHEREAS, The City currently has a contract with ConvergeOne Holdings Corp.

2   for the purchase of networking equipment, software and hardware/software support

3   manufactured by Cisco Systems Inc. in the amount of $65,000,000 (PS Contract ID

4   1000016323); and

5   WHEREAS, By entering into additional contracts for networking equipment,

6   software and hardware/software support, City will ensure adequate competition between

7   all major manufacturers of networking equipment which, in turn, shall ensure City is able

8   to obtain more competitive pricing when purchasing products from each of the four

9   manufacturers; now, therefore, be it

10   RESOLVED, That the Board of Supervisors, under Charter, Section 9.118(b),

11   hereby authorizes the Purchaser and Director of the Office of Contract Administration

12   to execute PeopleSoft Contract ID 1000023748 between the City and County of San

13   Francisco and Intervision Systems LLC for the purchase of networking equipment,

14   software and hardware/software support manufactured by Juniper Networks Inc., with

15   a contract not to exceed amount of $40,000,000 and a total contract duration of five

16   years commencing on February 1, 2022, and ending on January 31, 2027; and, be it

17   FURTHER RESOLVED, That within 30 days of the contracts being fully

18   executed by all parties, the Purchaser shall provide the final copies of the contracts to

19   the Clerk of the Board for inclusion into the official file.

20

21

22

23

24

25

Item 2 File 21-1228	Department: Office of Contract Administration

EXECUTIVE SUMMARY

Legislative Objectives

- The proposed resolution authorizes the Purchaser and Director of the Office of Contract Administration to execute an agreement between the City and Intervision Systems LLC. The contract has a not to exceed amount of $40,000,000 and a duration of five years commencing on February 1, 2022 and ending on January 31, 2027.

Key Points

- Over the past several years, City departments have generally procured technology equipment and services through the Technology Marketplace, which consists of a prequalified pool of vendors. Transactions are limited to $2.5 million, typically take one to four weeks to conclude, and agreements with vendors do not specify discounts. For high volume technology purchases, the City has been migrating to citywide contracts with re-sellers. Purchasing from one contract allows for tracking purchases by manufacturer, reduces procurement times to one to two hours of staff time, secures discounts, and allows for larger transactions.
- The Office of Contract Administration is proposing a new citywide contract with Intervision, a Juniper networking equipment re-seller. Intervision was selected using a competitive solicitation. The primary purchasers of Juniper networking products are the San Francisco International Airport (SFO) and San Francisco Public Utilities Commission (SFPUC). By entering into a manufacturer specific technology contract with Intervision, these agencies can gain the benefits described above.

Fiscal Impact

- The proposed $40 million contract not to exceed amount is based on prior spending on Juniper products. The average annual spending is $8.1 million, which OCA rounded down to a five-year amount of $40 million. OCA is proposing a $40 million contract because future purchases are expected to be less than historical average spending.

Recommendation

- Approve the proposed resolution.

MANDATE STATEMENT

City Charter Section 9.118(b) states that any contract entered into by a department, board or commission that: (1) has a term of more than ten years, (2) requires expenditures of $10 million or more, or (3) requires a modification of more than $500,000 is subject to Board of Supervisors approval.

BACKGROUND

Technology Purchases

Over the past several years, City departments have generally procured technology equipment and services through the Technology Marketplace, which consists of a prequalified pool of vendors. The process generally consists of submission and evaluation of bids, and transactions can take one to two four weeks to conclude. These agreements do not have set list price discounts; each bid is evaluated on a low-cost basis. Because vendors sell numerous products, it is difficult to track purchases by manufacturer. Technology Marketplace transactions are capped at $2.5 million per vendor.

According to the Office of Contract Administration, for high volume technology purchases, the City has been migrating to citywide contracts with re-sellers. Purchasing from one contract allows for tracking purchases by manufacturer, reduces procurement times to one to two staff hours, allows for transactions greater than $2.5 million, and secures discounts. An example of this is from November 2019, when the Board of Supervisors approved a $65 million agreement with ConvergeOne holdings, a Cisco product re-seller (File 19-1022). Unlike Technology Marketplace vendors, the Cisco contract defines discounts for each of the products offered. The City previously relied on the Technology Marketplace vendors for Cisco purchases.

The Office of Contract Administration is proposing a new citywide contract with Intervision, a Juniper networking equipment re-seller. The primary purchasers of Juniper networking products are the San Francisco International Airport (SFO) and San Francisco Public Utilities Commission (SFPUC). By entering into a manufacturer specific technology contract with Intervision, these agencies can gain the benefits described above.

Vendor Selection

The contract was competitively procured as per Administrative Code 21.1 through a Request for Proposals issued on September 20, 2020. Intervision was selected on the basis of guaranteeing the deepest discount on list prices of Juniper Technologies. The evaluation and ranking of respondents to the Request for Proposals are shown in Exhibit 1 below.

Exhibit 1: Juniper Re-Seller Bids

Vendor	Reseller Discount
Intervision	51.60%
Insight	42.67%

Source: OCA

OCA evaluated bids on a cost basis and determined that Intervision provided the deepest discounts for Juniper products. OCA did not evaluate how the discounts offered by Intervision compared to discounts offered by Technology Marketplace vendors.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution authorizes the Purchaser and Director of the Office of Contract Administration to execute an agreement between the City and Intervision Systems LLC. Intervision is a re-seller of networking equipment, software, and hardware/software support manufactured by Juniper Networks Inc. The contract has a not to exceed amount of $40,000,000 and a duration of five years commencing on February 1, 2022 and ending on January 31, 2027. Actual discounts on the proposed contract range from 10% to 80%, depending on the product purchased.

The contract is non-exclusive. Therefore, the City retains the option of procuring technology using Technology Marketplace vendors. Further, the City can enter into a concurrent agreement with a different re-seller.

FISCAL IMPACT

The proposed $40 million contract not to exceed amount is based on prior spending on Juniper products. The average annual spending is $8.1 million, which OCA rounded down to a five-year amount of $40 million. OCA is proposing a $40 million contract because future purchases are expected to be less than historical average spending. Actual expenditures are determined at the department level. Amendments to the proposed contract greater than $500,000 will require Board of Supervisors' approval.

RECOMMENDATION

Approve the proposed resolution.

RESELLER AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND
INTERVISION SYSTEMS LLC.

PeopleSoft Contract ID: 1000023748
OCA Term Contract ID: TC91115

TABLE OF CONTENTS

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

RESELLER AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND
INTERVISION SYSTEMS LLC

This Agreement is made this 1st day of February 1, 2022, in the City and County of San Francisco ("City"), State of California, by and between Intervision Systems LLC ("Contractor") and the City and County of San Francisco.

Recitals

WHEREAS, the City through wishes to procure a variety of networking hardware equipment, software and standard hardware and software from a certified Juniper Networks (Juniper) Value Added Reseller; and,

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through an Invitation for Bids (IFB) under Sourcing Event ID SFGOV-0000005930 issued on September 20, 2021, in which City selected Contractor as the Lowest Responsive Bidder pursuant to the IFB; and

WHEREAS, Reseller represents and warrants that it is qualified to sell such equipment, software licenses, software as a service, maintenance/support and related services and as set forth under this Agreement; and

WHEREAS, this is a contract primarily for Commodities and therefore there is no Local Business Entity ("LBE") subcontracting participation requirement for this Agreement ; and

WHEREAS, this Agreement has been approved by the City's Civil Service Commission pursuant to PSC **[TBD]**; and

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 Licensed Software meets the specifications contained in the Documentation. City's Acceptance of the products and/or services that are the subject of this Agreement shall be governed by the procedures set forth in Appendix C.

1.2   "Acceptance Period" means the period allocated by City to test the products and/or services that are to the subject of this Agreement to determine whether it/they conform/s to the applicable specifications and, if appropriate, properly operate 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   "Acceptance Window" means the time period following delivery of the products and/or services that are to the subject of this Agreement during which Contractor must secure Acceptance of the completed phase from City.

1.4   "Actual Uptime" means the total minutes in the reporting month that the Services were actually available to Authorized Users for normal use.

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

1.6   "Authorization or Authorization Document" means a Purchase Order of the City, properly executed, and certified by the Controller for the specific funding of this Agreement or any modification thereof.

1.7   "Authorized User" means Any End User authorized by City to access and utilize products and/or services that are to the subject of this Agreement, including any City employee, contractor, or agent, or any other individual or entity authorized by City.

1.8   "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Department of Technology and/or the Office of Contract Administration, hereinafter referred to as "Purchasing."

1.9   "City Data" means that data which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement, including data resulting from use of the products and/or services that are to the subject of this Agreement. City Data includes, without limitation, Confidential Information. This includes data that is provided by a third-party to the City for use under this Agreement.

1.10   "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 products and/or services that are to the subject of this Agreement.

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

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

1.13   "Contractor" means Intervision Systems LLC.

1.14   "Contractor Account or Project Manager" means the individual specified by Contractor as the Account Manager authorized to administer this Agreement on Contractor's behalf.

1.15   "Contractor's Website" means the Website that provides Authorized User access to the products and/or services that are to the subject of this Agreement.

1.16   "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.

1.17   "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.

1.18   "Deliverables" means Contractor's work product resulting from the products and services provided by Contractor to City during the course of Contractor's performance of the Agreement.

1.19   "Deliverable Data" means Project Data that is identified in Appendix A, and required to be delivered to the City.

1.20   "Designated CPU" means any central processing unit or attached processor complex, including its peripheral units, described in the Authorization Document. The Authorization Document may designate more than one CPU.

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

1.22   "Designated site" means any facility as the parties may designate from time to time in writing where the Designated CPU is located.

1.23   "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.

1.24   "Documentation" means the technical publications relating to the use of the products and/or services that are to the subject of this Agreement, such as reference, installation, administrative and programmer manuals, provided by Contractor to City.

1.25   "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.

1.26   "Errors, Defects and Malfunctions" means either a deviation between the function of the products and/or services that are to the subject of this Agreement and the documentation furnished by Contractor for the products and/or services that are to the subject of this Agreement, or a failure of these which degrades the use of the Software.

1.27   "End User" means any Authorized User authorized by City to access and use the Software and/or SAAS solution.

1.28   "Equipment" means the central processing unit[s] and associated peripheral devices and/or, computer hardware to be purchased or, leased by Contractor for the City.

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

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

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

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

any product. All Software, revisions and versions provided by Contractor shall be subject to the terms and conditions of this Agreement, including any amendments thereto.

1.33 "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.

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

1.35 "Limited Term Software" means a software license that Authorized User install on City's premise and access without the use of the Internet for a specified period of time beginning upon Acceptance and continuing thereafter for the period of time so authorized.

1.36 "Maintenance" means the enhancements, upgrades and new releases of the Licensed Software and/or SaaS, which includes only those additions and/or modifications to the Licensed Software and/or SaaS which (A) enhance functionality and/or performance without fundamentally altering the nature or manner in which the software operates, and (B) are made generally available without additional or increased charges to other persons entitled to receive maintenance from Licensor.

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

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

1.39 "Patch" means temporary repair or replacement of code in products and/or services that are to the subject of this Agreement to remedy an Error, Defect or Malfunction. Patches may be made permanent and released in Subsequent Releases of the products and/or services that are to the subject of this Agreement. 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. Patches are included in the annual payments made by City to Contractor for the products and/or services that are the subject of this Agreement.

1.40 "Performance Credit" means credit due to City by Contractor with regard to Contractor's service level obligations in Appendix C.

1.41 "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.

1.42 "Perpetual Software" means a software license that Authorized User install on City's premise and access without the use of the Internet for a period of time that is indefinite beginning upon Acceptance.

1.43 "Precedence" means 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 pre-printed document by Contractor including Appendix D.

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

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

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

1.47 "Reseller" means Intervision Systems LLC. Wherever "Contractor," "Supplier" or "Reseller" appears in the Agreement, it shall be construed to mean Intervision Systems LLC.

1.48 "Response Time" means 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.

1.49 "Revision" means an update to the current products and/or services that are to the subject of this Agreement which consists of minor enhancements to existing features and code corrections. Revisions are provided and included with the annual payments made by City to Contractor.

1.50 "SaaS" means software as a service.

1.51 "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 Manufacturer and/or Contractor's servers that provides the SaaS Services that may be accessed by Authorized Users through the Internet.

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

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

1.54 "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.

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

1.56 "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.

1.57 "Scheduled Downtime" means the total minutes in the reporting month during which Scheduled SaaS Maintenance was performed.

1.58 "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.

1.59 "Scheduled Uptime" means the total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.

1.60 "Services" means the work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including, without limitation, support services, storage, simulation and testing services, materials, equipment, actions and other requirements to be performed and/or furnished by Contractor under this Agreement.

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

1.62 "Supplier" means Intervision Systems LLC. Wherever "Contractor," "Supplier" or "Reseller" appears in the Agreement, it shall be construed to mean Intervision Systems LLC.

1.63 "Software Version" means the base or core version of the Software that contains significant new features and significant fixes and is available to the City. Software Versions may occur as the 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 Software Versions are provided and included as part of this Agreement upon request or approval from City for the upgrade.

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

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

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

1.67 "Support Services: means the Software support service required under this Maintenance Agreement. Support Services include correcting a Software Error, Defect or Malfunction; providing telephone and/or online support concerning the installation and use of the Software, detection, warning and correction of viruses; and disabled/disabling code.

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

1.69 "Third-Party Software" means the software described in Appendix B, "Third-Party Software-Included in this Agreement."

1.70 "Total Problems" means the total number of problems occurring in the reporting month.

1.71 "Total Transactions" means the total of Transactions occurring in the reporting month.

1.72 "Transactions" means Services web page loads, Services web page displays, and Authorized User Services requests.

1.73 "Transition Services" means that assistance reasonably requested by City to effect the orderly transition of the products and/or services that are the subject matter of this Agreement, in whole or in part, to City or to Successor Service Provider.

1.74 "Upgrade" means either an enhancement to the products and/or services that are the subject matter of this Agreement to add new features or functions to the system or software programming Revisions containing corrections to Errors, Defects and Malfunctions.

1.75 "Value Added Reseller" means a company that buys products and/or services that are the subject matter of this Agreement, improves it in some way ("adds value"), and then resells it.

1.76 "Warranty Period" means the period commencing with the installation of the products and/or services that are the subject matter of this Agreement during which reported Errors, Defects and Malfunctions are corrected without charge in accordance with the provisions below.

1.77 "Workaround" means a change in the procedures followed or end user operation of the products and/or services that are the subject matter of this Agreement to avoid an Error, Defect or Malfunction without significantly impairing functionality or degrading the use of the products and/or services that are the subject matter of this Agreement.

<div align="center">Article 2 Term of the Agreement</div>

2.1 **Term of the Agreement.** The five (5) year term of this Agreement shall commence on February 1, 2022 and expire on January 31, 2027, unless earlier terminated as otherwise provided herein. Contractor shall not begin performance of its obligations under this Agreement until it receives written notice from City that it may do so, which notice shall be in accordance with Section 3.1 "Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation". The written notice shall clearly identify the goods and/or services that will be rendered pursuant to it.

2.2 **Reserved (Options to Renew).**

<div align="center">Article 3 Financial Matters</div>

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   **Calculation of Charges and Payment**.

(a)   Contractor shall provide a minimum discount on all products and services purchased though this Agreement ("Minimum Discounts Below Manufacturer List Price") in accordance with Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

(b)   Contractor shall provide an invoice to the City solely for products and Services delivered pursuant to this Agreement. Compensation shall be made for products and Services identified in the invoice that City reasonably concludes has been satisfactorily delivered. Payment shall be made within 30 calendar days of receipt of the invoice or delivery of products and Services, whichever is later, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed Forty Million Dollars and Zero Cents ($40,000,000). In no event shall City be liable for interest or late charges for any late payments. This amount is based on City's anticipated spend over the Contract Term. Should City's anticipated spend over the Contract Term exceed current estimates, City may, in its sole and absolute discretion, increase the Contract NTE to allow for the additional purchases of goods and/or services covered by the resulting Contracts.

3.3.2   **Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until City approves the products and services 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. Except as expressly permitted in Section

3.1, if the City is in default on its payment obligations, Contractor shall be able to stop or suspend work without being deemed in breach of the Agreement.

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 **Reserved (LBE Payment and Utilization Tracking System)**.

3.3.6 **Getting paid by the City for goods and/or services.**

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

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

3.4 **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 fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims**. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to

conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6   **Reserved (Payment of Prevailing Wages).**

3.7   **Most Favored Customer Notice.** For the duration of the Agreement, Contractor agrees to give the City notice if a similarly situated public customer of Contractor will receive rates for a substantially similar service or equipment, offered under substantially similar terms and conditions that are lower than the rates provided in this Agreement when the volume of business from the other customer is equal to or less than the volume of business the City receives under this Contract. Contractor agrees to promptly bring to the City's attention instances in which other customers of Contractor may receive lower rates for substantially similar services or equipment.

Article 4   Services and Resources

4.1   **Services Contractor Agrees to Perform**.   Contractor is a Value Added Reseller/Supplier of Juniper Products and Services. The products and/or services that are the subject matter of this Agreement are listed in Appendix B. Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, products and Services beyond those listed in this Agreement unless this Agreement is modified as provided in Section 11.5, "Modification of this Agreement."

4.2   **Products and Services to be provided under this Agreement.** The Juniper products and services that may be purchased through Contractor fall into the following categories.

4.2.1   **Equipment.** Reseller shall, for the term of this Agreement, procure and pass through to the City for its use, the equipment specified in Appendix B. Reseller's procurement of said equipment shall be further subject and pursuant to the terms and conditions attached herein as Appendix C. Equipment may include the following:

(a)   Core Networking products including routers, servers, switches, optical networking, security, wireless and mobility, security, collaboration.

(b)   Computer Networking products including servers, data centers, blade and rack servers, management software.

4.2.2   **Licensed Software, SaaS and Subscription Based Software.** Reseller shall, for the term of this Agreement, procure and pass through to the City for its use, the software licenses, SaaS, and subscription based software specified in Appendix B. Reseller's procurement of said licenses shall be further subject and pursuant to the terms and conditions attached herein as Appendix C. The software and SaaS may include the following:

(a)   Cloud and subscription-based software, SaaS, cloud-based analytic tools, security tools, automated infrastructure, applications and services.

(b)   Custom, limited, or restricted offers that are typically products from third-party companies that are partners with Juniper or recently acquired by Juniper.

4.2.3   **Maintenance and Support.** Reseller shall, for the term of this Agreement, procure and pass through to the City for its use, the maintenance and support services specified in Appendix B. Reseller's procurement of said maintenance and support shall be further subject and pursuant to the terms and conditions attached herein as Appendix C. The maintenance and support services may include the following:

(a)   Maintenance and support for Juniper hardware.

(b)   Support for complex networks and systems that integrate Juniper equipment with third-party products and software.

(c)   Software Support for Juniper software applications and features.

(d)   Network optimization support, root cause analysis, data collection tools, migration planning.

(e)   Predictive analytics, automated fault management.

(f)   Juniper managed networks, data centers, security, and collaboration.

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

4.4   **Subcontracting**.

4.4.1   Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

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

4.5.1   **Independent Contractor**. For the purposes of this Section 4.4, "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 this Section shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and 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. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

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   **Reserved (Liquidated Damages)**.

Article 5   Insurance and Indemnity

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)   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, and

(d)   Technology Errors and Omissions Liability coverage, with limits of $10,000,000 each occurrence and each loss, and $10,000,000 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 $20,000,000 per occurrence and $20,000,000 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 Reserved.

5.2 **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 claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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.

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

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 products and/or services that are the subject of this agreement 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, provided, however, that Contractor shall not agree to any injunctive relief or settlement that obligates the City to perform any obligation, make an admission of guilt, fault or culpability or incur any expense, without City's prior written consent, which shall not be unreasonably withheld or delayed. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the products and/or services that are the subject of this agreement 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 products and/or services that are the subject of this agreement by reason of Infringement, or in Contractor's opinion City's use of the products and/or services that are the subject of this agreement 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 products and/or services that are the subject of this agreement as contemplated hereunder, (b) replace the products and/or services that are the subject of this agreement with a non-infringing, functionally equivalent substitute products and/or services that are the subject of this agreement, or (c) suitably modify the products and/or services that are the subject of this agreement to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the products and/or services that are the subject of this agreement. 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 products and/or services that are the subject of this agreement. Any unauthorized modification or attempted modification of the products and/or services that are the subject of this agreement by City or any failure by City to implement any improvements or updates to the products and/or services that are

the subject of this agreement, 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 products and/or services that are the subject of this agreement was neither designed nor intended to be used.

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

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

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

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

7.2.3   Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code 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.

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

Article 8   Termination and Default

8.1   **Termination for Convenience**

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

8.1.2   Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City

to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

(a)   Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

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

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

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

(e)   Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

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

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

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

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

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

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

8.1.4   In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically listed

in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

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

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

8.2   **Termination for Default; Remedies.**

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

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

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

(b)   Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within thirty (30) days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(c)   Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes

an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d)   A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization 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.

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

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

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

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

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

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

3.3.2	Payment Limited to Satisfactory Services		9.1	Ownership of Results
3.4	Audit and Inspection of Records		9.2	Works for Hire
			11.6	Dispute Resolution Procedure
3.5	Submitting False Claims		11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity		11.8	Construction
6.1	Liability of City		11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages		11.10	Compliance with Laws
Article 7	Payment of Taxes		11.11	Severability
8.1.6	Payment Obligation		Article 13	Data and Security

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

Article 9   Rights In Deliverables

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

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

Article 10   Additional Requirements Incorporated by Reference

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

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

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

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

10.5   **Nondiscrimination Requirements.**

10.5.1 **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 Sections12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 **Nondiscrimination in the Provision of Employee Benefits**. San Francisco Administrative Code 12B.2. 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 Section12B.2.

10.6 **Local Business Enterprise and Non-Discrimination in Contracting Ordinance.**. Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance").

10.7 **Reserved (Minimum Compensation Ordinance)**.

10.8 **Reserved (Health Care Accountability Ordinance).** .

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

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

10.11 **Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the

contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

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

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

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

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of 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.

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

10.15 **Reserved (Public Access to Nonprofit Records and Meetings).**

10.16 **Reserved (Food Service Waste Reduction Requirements).**

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

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

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

<p align="center">**Article 11   General Provisions**</p>

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:
City and County of San Francisco
Office of Contract Administration
1 Dr Carlton B Goodlett Pl, Room 430
San Francisco, CA 94102
Email: OCA@sfgov.org

To Contractor:
Intervision Systems LLC
2270 Martin Ave.
Santa Clara, CA. 95050
Email: Ted.Callagy@intervision.com, sarah.fletcher@intervision.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 shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

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

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, 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 contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

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

11.11 **Severability**. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or

impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

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

11.13 **Order of Precedence.** Contractor 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 August 22, 2019. 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. If the Appendices to this Agreement include any standard printed terms from the Contractor, 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.

11.14 **Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any properly served subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

<center>Article 12   Force Majeure</center>

12.1 **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.

12.2 **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.

12.3   **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.

12.4   **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 13   Data and Security

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

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

13.1.2 **Confidential Information.** In the performance of Services, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

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

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

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

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

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

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

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

13.3 **Business Associate Agreement.** This Agreement may require the exchange of information covered by the U.S. Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). A Business Associate Agreement ("BAA") executed by the parties is attached as Appendix E.

13.4 **Management of City Data and Confidential Information**

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

13.4.2 **Use of City Data and Confidential Information.** Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know

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

13.4.3 **Disposition of Confidential Information**. Upon termination of Agreement or request of City, Contractor shall within five business days return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge.

13.4.4 **Disaster Recovery**. Contractor shall support the City in the event of a disaster that disrupts the City's Cisco services by working with the City and other City Contractors to restore service as soon as possible; and case managing the restoration or replacement of equipment at covered locations that are designated by the City as being critical for public safety and City business. Because the City is a Public Safety and Public Service provider, Supplier shall ensure City is among the highest priority clients for recovery in the event of a large-scale disaster.

13.4.5 **Facial Recognition Technology Ban.** San Francisco Administrative Code Section 19B forbids most City Departments from obtaining, accessing or using Face Recognition Technology or information obtained from Face Recognition Technology. By executing this agreement, Contractor acknowledges that the subject of this agreement is not an automated or semi-automated process that assists in identifying or verifying an individual based on an individual's face.

Article 14   MacBride And Signature

14.1 **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.

34

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

CITY   **CONTRACTOR**

Recommended by: **Intervision Systems LLC**

_____   _____
Taraneh Moayed   **Tom Holt**
Assistant Director   Sales AVP
Office of Contract Administration   City Supplier Number: 0000030163

Approved as to Form:
Dennis J. Herrera
City Attorney

By: _____
Gustin Guibert
Deputy City Attorney

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

By: _____

Appendices
A: Value-Added Reseller Services
B: Calculation of Charges
C: City Terms and Conditions
D: Juniper Terms and Conditions
E: Business Associated Addendum

Appendix A
Value-Added Reseller Requirements

City and County of San Francisco and Intervision Systems LLC
Master Agreement for Juniper Products

CONTENTS

1. **Orders & Deliveries**
   A. Contractor shall place orders for Juniper products and services through Juniper's website (or Juniper's authorized distributors) with contingencies in place to also receive orders via fax, email or phone if website is not operational.
   B. Contractor shall serve as the sole contact point for all orders and deliveries and will retain all responsibility for all delivered items pursuant to this contract.
   C. Contractor shall replace all items that are delivered dead on arrival (DOA) without exception and will be responsible for the delivery of the replacement DOA items.
   D. Contractor to contact Juniper and submit an Return Merchandise Authorization [RMA] request within 1 business day.
   E. Contractor shall be able to deliver orders that are coming from their warehouse Monday to Friday between the hours of 8:00am to 5:00pm in coordination with the ordering City Department. Deliveries that are coming from the Contractor's warehouse that are outside the project scheduled date shall not be accepted and must be transported back by the Contractor.
   F. Drop ship deliveries from Juniper shall be permitted only upon prior approval by City. Drop ship deliveries shall have tracking numbers provided by the Contractor.
   G. City shall provide the Contractor 24 hours minimum notification to cancel delivery of equipment at no additional cost for a future reschedule of delivery.

2. **Pre-Sales Support**
Contractor shall provide the following pre-sales support services to City for no billable rate as part of the process of developing orders for Juniper products and services:
   A. Pre-Sales Engineering Support
   Contractor shall provide local pre-sales engineers with advanced Juniper certifications to advise City and assist in designing potential orders according to City's technical requirements. When requested by City, Contractor shall replicate City's network environment in Contractor's lab environment to test architectures prior to placement of an order.
   B. Pre-Sales Procurement Support
   When City initiates an order, Contractor shall provide advice on maximizing savings through strategies such as bundling purchase of certain products, licenses, or services, negotiating multi-year discounts, co-terminating support renewals, and exploring technology migration credits. Contractor shall regularly update City on Juniper's current promotions, any changes in pricing, and lessons learned from other clients to assist City purchasing the best technology, products, and solutions while minimizing cost.

3. **Staging**
   When requested by City, Contractor shall stage orders at Contractor's local facilities prior to delivery and deployment at City premises at no additional cost to City. As requested by City, staging shall include the following:
   A. Receiving the order

B. Immediately conduct inventory of full shipment when received and submit status to City Department.
C. Conducting asset-tagging.
D. Conducting burn-in.
E. Testing equipment.
    i. Validate turn-up functionality.
    ii. Ensure Hardware is operational.
    iii. Peripherals (Modules, SFPs, etc.) are Functional
F. Configuring equipment

4. Product Quality

Contractor shall guarantee the provision of genuine new original equipment manufacturer (OEM) products, with all appropriate manuals, licenses, warranty cards, user documentation, etc. No used, pre-owned, or refurbished equipment will be accepted. All products and services shall have valid and current Juniper warranties.

5. Management of Juniper Maintenance and Support Contracts

At no additional cost, Contractor shall:
A. Assess City existing Juniper contracts and make recommendations to ensure all production equipment is supported.
B. Centralize management of City's existing contracts for Juniper maintenance and support.
C. Maintain an accurate list of equipment and the location, renewal time and level of support provided.
D. Provide recommendations for the quarterly true ups based on new equipment integrated into the City's network.
E. Advise City when placing orders for new Juniper on how to minimize costs.

6. Help Desk

Contractor shall provide help desk services between the hours of 8am-5pm (PT), Monday through Friday, for the purpose of receiving, tracking, and assigning service calls and issues.

7. Background Checks

Upon request, Contractor shall provide City with a list of all proposed personnel and information to be specified by City sufficient for City to conduct a security background check on all personnel providing any services for the City.

Appendix B
Calculation of Charges

The list of Juniper hardware, software and standard hardware/software support available through this agreement can be found at: https://www.juniper.net/us/en.html.

This contract cannot be used to procure services beyond standard software or hardware support, including any type of professional services such as integration and implementation services.

For all Juniper products purchased through this contract, Contractor shall provide the following minimum percentage discounts below the list price on the most current Juniper List Price at the time City places an order, based on the following item categorization. The definitive source of information for item categorization is the most current Juniper List Price that lists the category for each SKU.

Product Family	Minimum % Discount Off of Juniper's List Price
EX switches	59.00%
EX MP based switches	59.00%
QFX 5K series Switches	63.00%
QFX 10K series switches	63.00%
Switch Licenses (EX and QFX)	45.00%
MX Series Router Bundle	68.00%
MX Series MPC cards	68.00%
Optics	80.00%
Cables and auxiliary items	59.00%
Support (Discounting includes all SVC sku's)	10.00%
Mist wireless - Includes pricing for all AP's and accessories	32.50%
Mist Cloud subscription and services - Includes all subscriptions and services	10.00%

In the event Juniper changes the categorization of the Juniper List Price, Contractor shall immediately contact City to negotiate an update to the minimum discounts in this contract.

Appendix C
City's Hardware, Software and Support Terms and Conditions

I.   **Hardware**
II.   **Licensed Software**
III. **SaaS Application and Subscription Based Software**
IV.   **Maintenance and Support Services.**

Contractor shall ensure that any Equipment or Services provided directly by Juniper under the Agreement meet the City's minimum requirements listed in this Appendix C.

I.   Hardware

A.   Freight, Title, and Risk of Loss. Freight charges are included in the purchase price. Contractor will pack and ship all Equipment in accordance with good commercial practices. Contractor is responsible for local warehousing of the Equipment, where Contractor will inspect and inventory the Equipment. City representatives may participate in these activities. Title and risk of loss to the Equipment will pass to City upon delivery to the City's destination point. City will promptly inspect the delivered Equipment, and City has no duty to accept, and may rightfully reject, Equipment that has been damaged in transit or that fails to conform to the order. Title to Software, which remains with owner of applicable Software, does not pass at any time but is governed by the applicable Software License Agreement.

B.   Warranty of Service. Contractor warrants to the 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. Warranty of Service claims must be asserted within a reasonable time of discovery. During the Warranty Period, in addition to warranty services, Contractor will provide maintenance services for the Equipment and support for the supplied Software as described in the Warranty Section of the Statement of Work. Those services and support are included in the Purchase Price.

C.   Warranty of Performance Specifications. During the Warranty Period, Contractor hereby warrants that the Equipment will perform in accordance with the required functionality Specifications.

D.   Equipment Warranty. During the Warranty Period, Contractor warrants that the Equipment under normal use and service will be free from material defects in materials and workmanship.

E.   Software Warranty. During the Warranty Period, Contractor warrants the Software will perform in accordance with the terms of the software specifications. Contractor

warrants that (i) it owns all rights, title, and interest in and to the Software under the terms and conditions of the Software License Agreement.

F. **Warranty of Suitability for intended purpose.** Contractor warrants that the projects and services will be suitable for the intended purpose of providing technology infrastructure and operations, technology security, service delivery, public safety systems and wiring.

II. **Licensed Software Terms**

A. **Grant of License.** Subject to the terms and conditions of the products and services that are the subject of the Agreement, Contractor will pass through from Juniper to City a non-exclusive and non-transferable license to use the Licensed Software. City acknowledges and agrees that this Agreement grants City no title or right of ownership in the Licensed Software.

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

In furtherance of its obligations as stated above, Contractor will provide to City a copy of the Source Code which corresponds to the most current version of the Licensed Software. Contractor agrees to update, enhance or otherwise modify such Source Code promptly upon its release of a new version of the Licensed Software to its other Licensees such that the Source Code is maintained as corresponding to the newest released version of the Licensed Software.

B. **Restrictions on Use.** City is authorized to use the Licensed Software only for City's internal purposes and only on the Designated CPU or the Designated Site specified in the Authorization Document. City agrees that it will, through its best efforts, not use or permit the Licensed Software to be used in any manner, whether directly or indirectly, that would enable any other person or entity to use the Licensed Software on other than the Designated CPU or Site.

C. **Use on other than Designated CPU or Site.** A single back-up or replacement CPU may be used as a substitute for a Designated CPU at any time, provided that City provides Contractor with written notice of such hardware substitution, including information regarding the replacement hardware as required for the Designated CPU pursuant to this Agreement, that City refrain from using the Licensed Software simultaneously on both the Designated CPU and the substitute CPU, and that the Licensed Software be removed from or rendered inoperable on the

Designated CPU by the City in a timely manner subsequent to installation of the Licensed Software upon the substitute CPU.

For the purpose of any bona fide City disaster recovery plan or with respect to the use of computer software in its municipal operations, City may make one copy of the Licensed Software for archival purposes and use such archival copy on a CPU other than the Designated CPU, or at a site other than the Designated Site, so long as such alternative CPU or site is owned or controlled by City. The use of such archival copy shall be limited to (1) the purpose of conducting limited testing of the disaster recovery plan's procedures and effectiveness and (2) during any period subsequent to the occurrence of an actual disaster during which the City cannot operate the Licensed Software on the Designated CPU or at the Designated Site. City agrees to furnish evidence of its disaster recovery plan and procedures upon Contractor's request.

D. **Transfer of Products.** City may move the Licensed Software and supporting materials to another City site which physically replaces the original installation site upon prior written notice to Contractor.

E. **Documentation.** Contractor shall provide City with the Licensed Software specified in the Authorization Document, and a minimum of two copies of the Documentation per installation. Contractor grants to City permission to duplicate all printed Documentation for City's internal use.

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

G. **Authorized Modification.** City shall be permitted to develop, use and modify Application Program Interfaces (API's), macros and user interfaces. For purposes of this Agreement, such development shall be deemed an authorized modification. Any such APIs, macros or other interfaces developed by the City shall become the property of the City.

H. **Delivery.** If applicable, one copy of each of the Licensed Software products in computer readable form shall be transmitted to the City within the delivery time periods specified in Appendix A.

I. **Installation.** If applicable, Contractor shall install the programs by within the delivery time periods specified in Appendix A.

J. **Risk of Loss.** If any of the Licensed Software products are lost or damaged during transmittal or before installation is completed, Contractor shall promptly replace such products, including the replacement of program storage media if necessary, at no additional charge to the City. If any of the Licensed Software products are lost or damaged while in the possession of the City, Contractor will promptly replace such products without charge, except for program storage media, unless supplied by the City.

K. **Acceptance Testing.** After Contractor has installed the Licensed Software, the City shall have a period of 7 days ("Acceptance Testing Period") from the date of installation to verify that the Licensed software substantially performs to the specifications contained in the Documentation. In the event that the City determines that the Licensed Software does not meet such specifications, the City shall notify the Contractor in writing, and Contractor shall modify or correct the Licensed Software so that it satisfies the Acceptance criteria. The date of Acceptance will be that date upon which City provides Contractor with written notice of satisfactory completion of Acceptance testing. If City notifies Contractor after the Acceptance Testing Period that the Licensed Software does not meet the Acceptance criteria of this section, then City shall be entitled to terminate this License in accordance with the procedures specified in Article 8 herein, and shall be entitled to a full refund of the license fee.

L. **Reserved (Training).**

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

N. **Warranties - Conformity to Specifications**. Contractor warrants that when the Licensed Software specified in the Authorization Document and all updates and improvements to the Licensed Software are delivered to City, they will be free from defects as to design, material, and workmanship and will perform on the Designated CPU in accordance with the Contractor's published specifications for the Licensed Software.

## III.	SaaS and Subscription Based Software

A. **SaaS Licensed Software.** Subject to the terms and conditions of this Agreement, Contractor will procure Juniper SaaS and Subscription Based Software including, but are not limited to the following services: Juniper Umbrella. 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.

B. **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.

C. **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.

D. **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.

E. **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.

F. **Project Managers.** Within 15 days of the execution of this agreement, Contractor and City shall each designate a Project Manager by exchanging in writing the name, title, address, email address and phone number of said 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. Contractor shall use its best efforts to maintain the same Project Manager throughout the duration of the Agreement. However, if Contractor needs to replace its Project Manager, Contractor shall provide City with written notice thereof at least forty-five (45) days prior to the date the Project Manager shall be replaced. Notwithstanding the foregoing, Contractor will have the right to appoint temporary Project Managers in connection with short term unavailability, sick leave or reasonable vacations. Contractor shall notify City in advance of any such temporary appointments. City may require Contractor to replace its Project Manager, by giving Contractor notification thereof and City's objective reasons therefor.

G. **Services Contractor Agrees to Perform** Contractor may procure Juniper SaaS Application and Hosted Services including, but are not limited to the following services: Juniper Umbrella. In providing this service, Contractor will:

1.   Provide all hardware, software and other equipment at Contractor's hosting site (and any applicable disaster recovery site) as necessary to host and deliver the SaaS Application and Services.

2.   Provide Authorized Users access to the SaaS Application and Services .

3.	Comply with the Service Level Obligations described in this Agreement. 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.

4.	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.

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

6.	Provide Disaster Recovery Services as described in Section 13.4.4.

**H.	Acceptance Testing.** After City has obtained access to the SaaS Application and Services, and subsequent to each SaaS Software version upgrade, revision and patch, City and Contractor shall conduct user acceptance testing, as 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 set forth by the City, then the 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.

**I.	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.

**J.	Third-Party Software**. Contractor shall provide certain third-party software required to operate the SaaS Software, and other bundled third-party software packages required to support the operation of the SaaS Software.

**K.	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.

L.   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.

M.   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 99.9999% Service Level Availability.

N.   Scheduled SaaS Maintenance

1.   Scheduled SaaS Maintenance dates and hours may vary depending on the specific Juniper product for which SaaS Maintenance is being performed. However, Contractor shall conduct Scheduled SaaS Maintenance solely during non-business hours with no less than 30 days prior notice to City.

2.   Scheduled SaaS Maintenance shall not exceed an average of one (1)hour per month over a twelve (12) month period except for major scheduled upgrades.

O.   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).

P.   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.

Q.   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 itt.netsvc@flysfo.com and It.services@sfwater.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.

R. **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.

S. **Service Levels for SaaS procured under this agreement.**

1. **Availability Service Level: Service Level Standard.** Services shall be available to Authorized Users for normal use 100% of the Scheduled Uptime.
2. **Calculation:** (Actual Uptime / Scheduled Uptime) * 100 = Percentage Uptime (as calculated by rounding to the second decimal point)**.**
3. **Performance Credit.**
(i) Where Percentage Uptime is greater than 99.9999%: No Performance Credit will be due to City.
(ii) Where Percentage Uptime is equal to or less than 99.9999 %: 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.

4. **Response Time** Transactions shall have a Response Time of two (2) seconds or less 99.9999% of the time each reporting month during the periods for which the Services are available.
5. **Calculation.** ((Total Transactions – Total Transactions failing Standard) / Total Transactions) * 100 = Percentage Response Time (as calculated by rounding to the second decimal point).
6. **Performance Credit**.
(i) Where Percentage Response Time is greater than 99.9999%: No Performance Credit will be due to City.
(ii) Where Percentage Response Time is equal to or less than 99.9999%: 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.

7.   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.

8.   Calculation. ((Total Problems – Total Problems failing Standard) / Total Problems) * 100 = Percentage Problem Response (as calculated by rounding to the second decimal point). Note: This Calculation must be completed for each SaaS Severity Level.

9.   Performance Credit. SaaS Severity Level 1 – 2.

(i)   Where Problem Response Time is greater than 99.9999%:   No Performance Credit will be due to City.

(ii) Where Problem Response Time is equal to or less than 99.9999%: 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.

10.   SaaS Severity Level 3 – 4.

(i)   Where Problem Response Time is greater than 99.9999%:   No Performance Credit will be due to City.

(ii) Where Problem Response Time is equal to or less than 99.9999%: 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.

T.   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.

U.   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.

   V. **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.

   W. **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.

   X. **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. **Maintenance and Support**

   A. **Licensed Software Maintenance and Support.**

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

     2. **Changes in Operating System.** If City desires to obtain a version of the Licensed Software that operates under an operating system not specified in the Authorization Document, Contractor will provide City with the appropriate version of the Licensed Software, if available, on a 90-day trial basis without additional charge, provided City has paid all maintenance and support charges then due. At the end of the 90-day trial period, City must elect one of the following three options: (i) City may retain and continue the old version of the Licensed Software,

return the new version to Contractor and continue to pay the applicable rental or license fee and maintenance charges for the old version; (ii) City may retain and use the new version of the Licensed Software and return the old version to Contractor, provided City pays Contractor the applicable rental or license fee and maintenance charges for the new version of the Licensed Software; or (iii) City may retain and use both versions of the Products, provided City pays Contractor the applicable rental or license fee and maintenance charges for both versions of the Licensed Software. City will promptly issue the necessary Authorization Document(s) to accomplish the above.

3. Support Charges for Limited Term License. When the license term specified in the Authorization Document is less than perpetual, all charges for maintenance and support are included in the periodic license or rental fee.

4. Support Charges for Perpetual License. Where the license term specified in the Authorization Document is perpetual, all charges for maintenance and support are as follows

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

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

5. Minimum Support Requirements

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

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

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

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

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

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

1) Priority 1 Protocol: Within two hours, Contractor assigns a product technical specialist(s) to diagnose and correct the Error, Defect or Malfunction; thereafter, Contractor shall provide ongoing communication about the status of the correction; shall proceed to immediately provide a Fix, a Patch or a Workaround; and exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Subsequent

Release. Contractor will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect or Malfunction is corrected.

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

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

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

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

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

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

B.   SaaS and Subscription Based Software Maintenance and Support.

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.

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

b.   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.

c.   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.

d.   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.

e.   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.

f.   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.

g.   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.

3.   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.

4.   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.

           5.   **24x7 Technical Support**: Authorized Users access Juniper Technical Support by calling or emailing Juniper Technical Support staff or by submitting a request via Juniper customer service web portal. 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. **Business Hours:** Technical Support shall be available between the business hours of 6:00am to 6:00 pm US Pacific Time. **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 Juniper Portal.

SaaS Severity Level	Target Response Time
SaaS Severity Level 1: *Requires immediate attention– Critical production functionality is not available or a large number of users cannot access the SaaS Application. Causes a major business impact where service is lost or degraded and no workaround is available, preventing operation of the business.*	*Request Response Time: 30 minutes.* *Request Resolution Time Target: < 2 hours.* *Maximum Permitted Request Resolution Time: < 48 hours*
SaaS Severity Level 2: *Requires priority attention - Some important production functionality is not available, or a small number of users cannot access the system. Causes significant business impact where service is lost or degraded and no workaround is available; however, the business can continue to operate in a limited fashion.*	*Request Response Time: 1 hr.* *Request Resolution Time Target: < 4 hours* *Maximum Permitted Request Resolution Time: < 96 hours*
SaaS Severity Level 3: *Requires attention –There is a problem or inconvenience. Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully and users are able to continue business operations.*	*Request Response Time: 1 hr.* *Request Resolution Time Target: < 6 hours* *Maximum Permitted Request Resolution Time: < 7 days*

SaaS Severity Level	Target Response Time
SaaS Severity Level 4: *There is a problem or issue with no loss of service and no business impact.*	*Request Response Time: 1 hr.* *Request Resolution Time Target: < 24 hours* *Maximum Permitted Request Resolution Time: < 7 days*

Appendix D
Juniper Terms and Conditions

MASTER PURCHASE AND LICENSE AGREEMENT

This Master Purchase and License Agreement (the "**Agreement**") is entered into between Juniper and the party accepting these terms ("**Company**" or "**End User**")(each individually, a "**Party**", and collectively, the "**Parties**"), and consists of the General Terms and Conditions set forth below, the Online Policies, Guidelines and Procedures, and the following Schedule(s) and/or Special Terms attached to the General Terms and Conditions, all of which are incorporated, as applicable, into this Agreement by this reference:

- Channel Schedule: Terms and Conditions Applicable to Resellers only;
- End User Schedule: Terms and Conditions Applicable to End Users only; and
- Special Terms: Supplemental terms and conditions applicable to specific transactions, including, but not limited to, Agency Terms, System Integrator Terms, or Federal Terms.

GENERAL TERMS AND CONDITIONS

1. Scope. These General Terms and Conditions ("**GTC**") set forth terms and conditions for the purchase and/or licensing of Hardware, Software, Services, and/or Cloud Services by the Company during the Agreement Term.

2. Precedence. In the event of any conflict, the following documents that are listed higher in order have precedence and apply in place of any substantially similar terms and conditions of a document lower in the order:

- The GTC and the Glossary;
- The terms and conditions of the applicable Schedule;
- The terms and conditions of any applicable Special Terms;
- The terms and conditions of an attachment to one of the above;
- The terms and conditions of Descriptive Content; and
- The terms and conditions of any Online Policies, Guidelines and Procedures.

3. Term. This Agreement is effective from the date of Company's acceptance (the "**Effective Date**") and will have an initial term until the twelve (12) months immediately following the Effective Date ("**Initial Term**"). After the Initial Term, this Agreement shall automatically renew for successive one-year terms ("**Renewal Term**") (collectively, the "**Agreement Term**"); unless, however, before this Agreement automatically renews, either party gives no less than ninety (90) days' notice to the other party, that the Agreement will terminate at end of the then current-term.

4. Transactional Terms.

The following terms apply as indicated within the applicable Schedule(s).

a) Payment. All payments due hereunder must be made net thirty (30) days from the date of invoice. Juniper may require other payment arrangements and may further require a credit check. Unless otherwise stated herein, payments shall be made in U.S. dollars. Accounts past due are subject to a monthly charge of 1.5% or the maximum amount permitted by law, whichever is less, based on the outstanding overdue balance.

b) Ordering. Company must comply with the Purchase Order Requirements. Company's non-compliance with the Purchase Order Requirements may result in Juniper's rejection of Company's Purchase Order. Juniper will confirm its ability to meet Company's requested delivery dates or propose alternative dates. The planned delivery date is referred to as the "**Scheduled Delivery Date**."

c) Cancellations and Rescheduling. Unless revisions are required by Juniper, Company may not cancel, reschedule, or otherwise modify Purchase Orders, in whole or in part, less than thirty (30) days prior to the Scheduled Delivery Date. Should a request for a cancellation or rescheduling received thirty (30) days or less prior to the Scheduled Delivery Date be approved by Juniper (in its sole discretion), the Hardware, Software, Cloud Services and/or Services will be subject to an order cancellation charge equal to ten percent (10%) of the purchase price.

d) Delivery. Except for purchases made indirectly through Authorized Resellers, Company understands and agrees that the terms below in this Section, as supplemented by the additional delivery terms posted in the Shipping Terms Exhibit as set forth at https://www.juniper.net/Shipping-Terms-Exhibit (the "**Shipping Terms Exhibit**"), are the sole and exclusive terms of delivery and supersede all additional or inconsistent terms of any Purchase Order or other ordering document.

e) Taxes. All prices payable under this Agreement are exclusive of Taxes and are paid net of any applicable withholding tax. The Company shall be responsible for paying Taxes arising from purchases of Hardware, Software, Cloud Services and/or Service. If applicable, valid exemption documentation for each taxing jurisdiction shall be provided to Juniper prior to invoicing. The Company shall: (i) promptly notify Juniper if its exemption is revoked or modified; (ii) render reasonable assistance to Juniper by promptly providing valid tax receipts and other required documentation of the payment of any withholding taxes; (iii) promptly provide any applications for reduced tax rates; and (iv) promptly notify and assist Juniper in any audit or tax proceeding, related to transactions hereunder; (v) comply with all applicable tax laws and regulations; and (vi), fully indemnify, defend and otherwise pay or reimburse Juniper for all costs and damages related to any liability incurred by Juniper as a result of the Company's non-compliance or delay with its responsibilities herein. Neither party shall be liable for taxes or assessments on the other Party's

net income, gross income, capital, net worth, franchise, privilege, property, or any similar taxes or assessments.

5. Company Affiliates. Company guarantees the payment and performance of and shall remain liable for, and shall defend and indemnify Juniper against, any and all acts or omissions in violation of the terms of this Agreement by any Affiliate of the Company. If at any point during the Agreement Term, any Affiliate of the Company no longer meets the definition of an Affiliate, such Affiliate shall no longer be able to purchase under the terms of this Agreement.

6. Confidentiality

a) Scope. "Confidential Information" means all information disclosed, directly or indirectly, to the other party (the "**Receiving Party**") and labeled as confidential or proprietary, stated at the time of oral disclosure to be confidential or proprietary, or by the nature of the information and the circumstances of the disclosure, the Receiving Party should reasonably infer to be confidential or proprietary. Confidential Information does not include information which: (i) is or becomes generally known through no fault of the Receiving Party; (ii) is known to the Receiving Party at the time of receipt, as evidenced by the Receiving Party's records; (iii) is hereafter furnished to the Receiving Party by a third party as a matter of right and without restriction on disclosure; or (iv) is independently developed, as evidenced by contemporaneous records by the Receiving Party without use of or reference to such Confidential Information.

b) Protection. The Receiving Party will use a reasonable degree of care to maintain all Confidential Information to accomplish the purposes of this Agreement or as otherwise agreed in writing by the disclosing Party. The Receiving Party will not disclose to any third party nor use Confidential Information for any unauthorized purpose. The Receiving Party may only disclose Confidential Information: (i) to its employees and representatives that have a need to know to accomplish the purposes of this Agreement; and (ii) in response to a valid order of a court or other governmental body or as otherwise required by law to be disclosed, provided the Receiving Party, to the extent legally permissible, gives sufficient notice to the disclosing party to enable the disclosing party to take protective measures. Except as otherwise expressly set forth in this Agreement, no rights or licenses to intellectual property in Confidential Information is granted by either Party under this Agreement, whether express, implied or otherwise, to the other Party. The obligations imposed on the Receiving Party shall survive the expiration or termination of this Agreement.

7. Data Protection. All data collected, processed, and/or used in connection with this Agreement is subject to the Juniper Privacy Policy. Juniper shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of End User Data as described in the User Guides and/or the applicable Documentation. To the extent End User Data includes Personal Data, as defined in the Data Protection Agreement ("**DPA**") located at

https://www.juniper.net/us/en/privacy-policy/customer-dpa/, the terms of the DPA are hereby incorporated by reference and shall apply.

8. Intellectual Property. Subject to the express rights and licenses granted by Juniper in this Agreement, Company acknowledges and agrees that: (i) any and all intellectual property rights in or to the Hardware, Software, Services, and/or Cloud Services are the sole and exclusive property of Juniper or its licensors; (ii) Company shall not acquire any ownership interest in any such intellectual property rights under this Agreement; and (iii) if Company acquires any intellectual property rights in or relating to any product or Services sold or licensed under this Agreement (including any rights in any derivative works or patent improvements relating thereto), by operation of Law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Juniper, without further action by either Party.

9. Company's Indemnity

a) Except to the extent caused by the gross negligence or willful misconduct of Juniper, its employees or agents, Company will indemnify, defend and hold harmless Juniper and its directors, officers, employees, shareholders, agents, and affiliates (the "**Indemnitees**") from any and all losses, damages, liabilities, judgments, settlements, interest, penalties, fines, costs, and expenses of whatever kind, including attorney's fees, arising out of any third-party claims arising out of or resulting from the following (whether actual or alleged): (i) fraud, misrepresentation, gross negligence, willful misconduct, or breach of or noncompliance with any provision of this Agreement; (ii) any false or inaccurate representation regarding an export license or the applicability or inapplicability of a license requirement or exception; (iii) violation of any applicable Laws, including without limitation any customs, export control, or sanctions laws or regulations; and/or (iv) any obligation for which Company maintains insurance.

THE INDEMNIFICATION OBLIGATIONS SET FORTH ABOVE SHALL APPLY IN EACH CASE WHETHER OR NOT CONTRIBUTED TO, OR CAUSED IN PART BY, THE ACTIVE OR PASSIVE NEGLIGENCE OR FAULT (OTHER THAN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) OF JUNIPER, ITS EMPLOYEES, OR AGENTS.

b) Notwithstanding anything to the contrary set forth above in this Section, (i) an Indemnitee may participate, at its own expense, in any defense and settlement directly or through counsel of its choice, and (ii) Company will not enter into any settlement agreement on terms that would diminish the rights provided to the Indemnitee, accept any liability, or increase the obligations assumed by the Indemnitee under this Agreement, without the prior written consent of the Indemnitee.

10. Intellectual Property Indemnity

a) Obligations. Subject to Section 11 below and the provisions of this Section 10, Juniper shall indemnify and defend any suit brought against Company to the extent that it is based upon a claim

that a Juniper Hardware, Software, Service, and/or Cloud Service sold or licensed to Company under this Agreement infringes any third-party United States patent, copyright, or trademark ("**IP Claims**") and will pay all damages and costs that a court finally awards against Company as a result of such claim; provided, that Company: (i) as soon as possible but in any event within thirty (30) days of becoming aware of such claim (whether or not a claim has been filed): (1) gives Juniper written notice of such claim, and (2) furnishes Juniper with a copy of each communication, notice or other document relating to the claim; (ii) gives Juniper complete control of the defense and settlement of such claim; and (iii) gives all reasonable information and assistance in the defense or settlement of such claim at Company's expense. It is incumbent on Company to provide notice to Juniper as soon as it becomes aware of any potential claim, in order for Juniper to mitigate any potential damages.

b) <u>Remedy</u>. Should a Juniper Hardware, Software, Service, and/or Cloud Service become, or in Juniper's opinion, likely become the subject of an IP Claim, Juniper, at its option, may either: (i) procure for Company the right to continue using the Juniper Hardware, Software, Service, and/or Cloud Service, or (ii) replace or modify the allegedly infringing item to make it non-infringing provided material functionality is maintained. If, in Juniper's sole opinion, neither of the foregoing alternatives is commercially reasonable, Juniper will grant Company a refund of the purchase price of the relevant Hardware, Software, Service, and/or Cloud Service depreciated on a five-year straight-line basis provided that Company, at Juniper's option, either returns the Product to Juniper, certifies the destruction thereof, or ceases to use the Service.

c) <u>Exclusions</u>. Juniper shall have no obligation or liability for, and Company shall indemnify Juniper and its Affiliates against, any claim of infringement which is based, in whole or in part, upon (i) the combination, operation or use of the Hardware, Software, Service, and/or Cloud Service with any hardware, software or service supplied by a party other than Juniper; (ii) any alteration or modification of the Hardware, Software, Service and/or Cloud Service which is not pre-approved by Juniper in writing; (iii) any non-Juniper hardware, software, or service; (iv) any specifications, designs or instructions provided to Juniper by or on behalf of Company; (v) Company's failure to promptly implement an update or modification to the Hardware, Software and/or Service (e.g., install a Supported Release) provided by Juniper; or (vi) use of the Hardware, Software, Service and/or Cloud Service in a manner other than which it was designed or in a manner other than as specified by Juniper; or (vii) any circumstance for which Company is obligated to indemnify any Indemnitee. Juniper shall not be obligated or responsible for any settlement entered into or damages arising from admissions by Company without Juniper's prior written consent.

THE INFRINGEMENT INDEMNITY SET FORTH IN THIS SECTION STATES JUNIPER'S ENTIRE LIABILITY AND OBLIGATION AND COMPANY'S SOLE REMEDY FOR CLAIMS OF INFRINGEMENT OR MISAPPROPRIATION OF THIRD-

PARTY PATENT, COPYRIGHT, TRADEMARK, AND/OR OTHER INTELLECTUAL PROPERTY RIGHTS.

11. Limitation of Liability

IN NO EVENT SHALL JUNIPER OR ITS AFFILIATES HAVE ANY LIABILITY FOR ANY LOST PROFITS, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, INDEMNIFICATION. THOSE RESULTING FROM THE USE OF HARDWARE, SOFTWARE, SERVICES, AND/OR CLOUD SERVICES PURCHASED HEREUNDER, OR THE FAILURE OF HARDWARE, SOFTWARE, SERVICES, AND/OR CLOUD SERVICES TO PERFORM, OR FOR ANY OTHER REASON. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY EXCLUSIVE OR LIMITED REMEDY. JUNIPER SHALL NOT HAVE ANY LIABILITY FOR THE ACTS OR OMISSIONS OF ANY THIRD PARTY (OTHER THAN FOR JUNIPER'S SUBCONTRACTORS).

JUNIPER'S AND ITS AFFILIATES' AGGREGATE LIABILITY ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT AND/OR SALE OR LICENSING OF HARDWARE, SOFTWARE, SERVICES, AND/OR CLOUD SERVICES SHALL BE LIMITED TO THE GREATER OF $100,000 OR THE AMOUNT PAID BY COMPANY FOR THE HARDWARE, SOFTWARE, SERVICES, AND/OR CLOUD SERVICES IN THE TWELVE MONTHS PRECEDING THE CLAIM IN QUESTION UP TO A MAXIMUM OF $2,000,000.

12. Warranty Disclaimer. Except as expressly set forth in this Agreement, and to the extent permitted by applicable Law, Juniper (on behalf of itself and its Affiliates) EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH REGARD TO THE HARDWARE, SOFTWARE, SERVICES, AND CLOUD SERVICES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS, ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE, AND ALL WARRANTIES THAT THE HARDWARE, SOFTWARE, SERVICES, OR CLOUD SERVICES WILL MEET THE REQUIREMENTS OF COMPANY OR ANY OTHER PERSON OR ENTITY, BE AVAILABLE OR OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, OR BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, PRODUCT, OR SERVICE.

13. Termination

a) <u>Termination for Convenience</u>. Except for End Users, either Party may terminate this Agreement, in whole or in part (excluding the GTC), for its convenience upon thirty (30) days prior written notice to the other Party. Juniper will be entitled to payment for Purchase Orders that include Hardware, Software, and/or Cloud Services, that are accepted and shipped to, delivered to, or received by Company as of the date of termination. If Company terminates this Agreement, then Company will not be entitled to a refund or credit for any months remaining for any purchased Services. In the event that, following the termination of this Agreement and prior to the execution of any subsequent purchase or license agreement between the Parties, Company places Purchase Orders and Juniper accepts such Purchase Orders, then any such Purchase Orders shall be governed by the terms and conditions of this Agreement notwithstanding the earlier termination of this Agreement; provided, however, that acceptance by Juniper of any such Purchase Order will not be considered an extension of the term of this Agreement nor a renewal thereof.

b) <u>Termination for Breach</u>. If either Party breaches a provision of this Agreement and fails to cure such breach within 30 days after receiving written notice of the breach from the other Party, then the non-breaching Party shall have the right to terminate this Agreement at any time; provided if a breach cannot be cured within 30 days but is capable of cure, the breaching party shall not be in default if, within 30 days of receiving notice of breach, in good faith, it begins and continues to attempt to cure the breach. In such case, the breaching party shall have a reasonable time to cure the breach before being in default. Juniper shall be entitled to all such sums as are due in accordance with this Agreement for the delivered Hardware, Software, and Cloud Services, as well as Services performed and rendered up to the date of termination, such sums due and payable in accordance with the Agreement.

c) <u>Survival of Provisions</u>. With the exception of Section 10 above, the terms of the GTC shall survive termination hereof for any reason.

14. Services Suspension and Termination Rights. Except for Cloud Services, Juniper may suspend any unpaid Services with thirty (30) days' notice to the Company. Where the Company continues to be in default, Juniper may in addition to any other remedy, terminate those Services with or without notice to Company (or to any End User) in which case, Juniper will have no liability for ceasing the Services.

15. Miscellaneous

a) <u>Governing Law</u>. This Agreement shall be interpreted and governed by the laws of the State of California without regard to its conflict of laws principles or to the U.N. Convention on Contracts for the International Sale of Goods, the application of which is hereby excluded. For any disputes arising out of this Agreement, the Parties consent to the personal and exclusive jurisdiction of, and venue in, the state and federal courts within Santa Clara County, California.

b) <u>Compliance with Laws; Export Requirements</u>.

Company and its personnel shall always comply with the Compliance Rules.

In the course of Company's purchase, resale, or use (as applicable) of Hardware, Software, Cloud Services and/or Services, Company shall comply strictly with all export and import laws. In addition, Company shall fulfill the additional duties regarding export and import controls and trade sanctions as described at https://www.juniper.net/assets/us/en/local/pdf/additional-resources/juniper-networks-shipping-terms-exhibit.pdf.

Company shall not directly or indirectly export, re-export, transfer, divert, release, or import Hardware, Software, Cloud Services and/or Services, to any other person or entity (nor make any use thereof) except with all required government approvals, permits, and licenses or as otherwise permitted under U.S. and other applicable Laws. Without limiting the foregoing, Company shall not export or re-export, directly or indirectly, any Hardware, Software, Cloud Services and/or Services to any Group E country (currently Syria, Cuba, Iran, North Korea) (Supp 1 to EAR Part 740).

c) Force Majeure. Except for Company's payment obligations contained herein, neither Party will be responsible for any failure or delay in performance due to causes beyond its reasonable control, provided such Party promptly notifies the other Party in writing of such event.

d) Assignment. Company may not assign or delegate or otherwise transfer its licenses, rights, or duties under this Agreement except with the prior written consent of Juniper. Any attempted prohibited assignment will be void. Juniper may assign, sub-contract or delegate any or all of its rights and/or its obligations under this Agreement to any Affiliate of Juniper without the consent of Company. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns.

e) Notices. Any notices related to this Agreement must be in writing and sent by registered mail or receipted courier service, in the case of: (i) Juniper, to the Address Details; and (ii) the Company, to the address provided by the Company. Juniper may permit other notification methods as described in the Onboarding Information. Notices may also be posted on the relevant Juniper website.

f) Audit. Company will maintain accurate and legible records for a period of three years after the termination or expiration of the Agreement, and will grant to Juniper, or its designee, reasonable access to and copies of, any information reasonably requested by Juniper to verify compliance with the terms of this Agreement.

g) Severability; Remedies; Waiver. In the event that any one or more provisions contained herein shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired. Except as otherwise expressly provided herein, the

remedies contained herein are cumulative and in addition to any other remedies at law or equity. A Party's failure to enforce any provision of this Agreement shall not constitute a waiver of any future enforcement of that or any other provision of this Agreement.

h) <u>No Third-Party Beneficiaries</u>. This Agreement does not constitute a third party beneficiary contract and, unless expressly and specifically stated in this Agreement, shall not be construed to be for the benefit of any person or entity not a party hereto, and no such person or entity shall have any license, right, or claim in connection with this Agreement.

i) <u>Guidelines and Policies</u>. Juniper may at any time modify any Online Policies, Guidelines and Procedures effective when posted to the applicable site, provided that no such modification shall affect the provision of Hardware, Software, Cloud Services and/or Services under any Purchase Order accepted by Juniper prior to the effective date of such modification. By ordering Hardware, Software, Cloud Services and/or Services under this Agreement, Company understands that it is bound by Juniper's then-current version of its Online Policies, Guidelines and Procedures.

j) <u>Entire Agreement; Amendment</u>. The terms and conditions contained in the Agreement, including the GTC and applicable Schedule(s), any Special Terms, Attachments, Online Policies, Guidelines and Procedures incorporated by reference herein, constitute the entire agreement between the Parties and supersede all previous and/or contemporaneous agreements and understandings, whether oral or written, between the Parties hereto with respect to the subject matter of this Agreement. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by the relevant authorized representatives of each of the Parties.

16. The English Version of Agreement Governs

The English language version of this Agreement constitutes the entire understanding and contract between the Parties and supersedes all prior agreements, commitments or representations between the Parties, whether oral or written, as well as any downloaded or translated version of this Agreement, whether or not such downloaded or translated version is signed (including by digital or other electronic means) by either Party. Any copy of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original.

END USER SCHEDULE

(Applies to all of End User's purchases of Hardware, Software, Cloud Services and/or Services for internal use)

1. Scope of Agreement. This End User Schedule is between Juniper and the End User that licenses the right to use the Software and/or access the Cloud Services, and purchases the Hardware and/or Services as part of a solution (collectively, "**Juniper Solutions**"), either (i) directly from Juniper, and/or (ii) indirectly through Authorized Resellers, solely for internal use and not for resale. The applicable sections below will govern the licensing and/or purchase of the applicable Juniper Solutions.

2. Terms for all Juniper Solutions

a) <u>Transactional Terms</u>. Section 4 of the GTC applies to direct Orders only and does not apply to End User orders from an Authorized Reseller.

b) <u>Pricing</u>. Unless purchasing or licensing via an Authorized Reseller, or as otherwise negotiated on a deal by deal basis and set forth in a Quote or Purchase Order acknowledgement, the purchase price for the Hardware, Software, Cloud Services, and/or Services is as set forth in Juniper's then current price list effective at the time an End User Purchase Order is accepted by Juniper.

c) <u>Use of Third Party Products / Applicable Terms</u>. For non-Juniper branded products and/or services delivered in connection with this End User Schedule, such third-party products and/or services shall be separately governed and licensed by the applicable third-party product and/or services terms and conditions. Such third-party terms and conditions shall supersede this End User Schedule for non-Juniper branded products and/or services. For the avoidance of doubt, the third-party supplier of non-Juniper branded products and services shall be solely responsible for support, warranties, indemnities and other terms and conditions applicable to such products and services.

d) <u>End of Life / End of Service</u>. Juniper will provide End of Life ("**EOL**") and End of Service ("**EOS**") notifications to End User for discontinued Hardware, Software, Cloud Services, and/or Services, either directly or through an announcement posted on the Juniper website, in accordance with Juniper's EOL/EOS Policies.

3. Specific Terms for Hardware

a) <u>Hardware Warranty Policy</u>. The terms and conditions of the Juniper Product Warranty are available at https://support.juniper.net/support/warranty/.

b) <u>Title Transfer</u>. If End User decides to transfer title to its Juniper Platform, then it must remove all Software and/or Embedded Software before transferring title. All transferred Juniper Platforms and subsequent Software licensing are subject to the Service and Support Inspection and Reinstatement Policy.

4. Specific Terms for Services

a) Support Services (Maintenance Services, Advanced Services, Education Services). The following terms in this Section constitute the End User Support Agreement ("**EUSA**") as referred to in Juniper's Descriptive Content.

i. Service Term. Subject to Juniper's acceptance of a valid Purchase Order from End User or an Authorized Reseller, the Service term of a Service Contract will begin on (i) the date of Purchase Order acceptance if the Purchase Order does not include the associated Hardware (if any) or the Service Contract is for Software only, or (ii) the date the Hardware is deemed delivered by Juniper if the Purchase Order for the Service Contract includes associated Hardware; or (iii) the date as agreed to in writing between the Parties (including as quoted by Juniper and listed in the Purchase Order), if any, in which event such date shall supersede any date determined under (i) or (ii).

ii. Renewal Term. The start date of the Service Contract following the initial Services term of the Services (and any subsequent renewal terms) will begin on the day after the immediately preceding Service Contract expired.

iii. Renewal Process. Subject to then applicable EOL/EOS Policies, no less than sixty (60) days prior to the expiration of the initial and subsequent Service Contract term, a notice of expiration and a Quote for the fees for the new Service Contract term will be provided by Juniper to End User or an Authorized Reseller. If End User wishes to purchase further Services, then End User shall provide a Purchase Order to Juniper or an Authorized Reseller, as per the Quote, to match the quotation on or before the expiration date of the then-current Service Contract term. Upon Juniper's receipt of such Order, End User or an Authorized Reseller placing the Order shall be invoiced in accordance with the terms of this End User Schedule.

iv. Subcontracting. Juniper may subcontract with, or assign to, its Affiliates or other third parties the obligations for performance of any Services.

v. Descriptive Content. Scope and details of Support Service-specific terms are specified in the applicable Descriptive Content that is attached to or referred to in a Schedule or Quote, or is made available through the then-current Juniper website. The version of the applicable document that is effective as of the date of the applicable Quote, shall be deemed incorporated by reference into the Purchase Order.

vi. True Up. End User must promptly True Up any unpurchased Support Services rendered by Juniper.

b) Professional Services. End User may request on an "as-needed", non-exclusive basis Professional Services. Where Juniper agrees to provide such Professional Services the Parties will mutually agree on a SOW, which shall include at a minimum: (i) a reasonably detailed description

of the project or Professional Services to be performed; (ii) a schedule and completion date; (iii) the position description of who will perform the applicable Professional Services; (iv) an acceptance procedure for the Professional Services rendered; (v) a compensation and payment schedule; and (vi) the identity of the End User who will receive the benefit of the Professional Services. Where the Professional Services are provided to End User through an Authorized Reseller, the Authorized Reseller will deliver such services under a SOW as agreed between End User and such Authorized Reseller.

i. <u>End User Obligations</u>. End User: (1) shall be responsible for the accuracy and completeness of the information End User provides to Juniper; (2) agrees to provide all necessary direction and cooperation to enable Juniper to provide the Professional Services; and (3) agrees to provide instructions in a manner reasonably requested by Juniper and Juniper shall be entitled to act on any such instructions, whether provided verbally, electronically, or in writing by a person known to Juniper and that Juniper reasonably believes to be authorized to act on End User's behalf or End User's designee.

ii. <u>Juniper Obligations</u>. Juniper: (1) will not be responsible for any delays or liability arising from missing, delayed, incomplete, inaccurate or outdated information provided by End User, or if End User does not provide adequate access to its employees, agents, and other representatives necessary for Juniper to perform the Professional Services; and (2) represents and warrants that the Professional Services will be provided in a professional and workmanlike manner and performed in accordance with generally accepted industry standards; and (3) will be solely responsible for securing suitably trained and experienced personnel to perform Professional Services hereunder.

5. Specific Terms for Software and Cloud Services

a) <u>License and Right to Use</u>. Subject to the terms and conditions of this End User Schedule, Juniper grants End User a non-exclusive, non-transferable (i) license to use the Software, and (ii) right to use the Cloud Services, during the License Term and/or Subscription Term, as applicable, for up to the Licensed Units. Licenses or rights to use the Software and/or Cloud Services that are not expressly granted in this End User Schedule shall not arise by implication or otherwise and are hereby expressly reserved. End User shall have no right or license in the Software, nor a right to use the Cloud Services, unless End User rightfully acquired the Software or purchased the right to use the Cloud Services from an Approved Source. Use of the Software and/or Cloud Services may not exceed the Licensed Units for such Software and/or Cloud Services.

b) <u>General Restrictions</u>. Unless expressly authorized by Juniper, End User shall not sublicense, transfer, or assign, whether voluntarily or by operation of law, any right or license in or to the Software and/or Cloud Services to any other person or legal entity, including an End User Affiliate, even if End User transfers title to the Juniper Platform or when a lease to any Juniper Platform

ceases. Any such attempted sublicense, transfer, or assignment shall be void. Further, End User shall not, (1) directly or indirectly, decompile, disassemble, reverse engineer, modify, unbundle, detach or separate any part of or embed within, or create derivative works based on, any Software and/or Cloud Services; (2) sell, resell, rent or lease any Software and/or Cloud Services; (3) make any copies of Software and/or Cloud Services except as reasonably necessary for archival and "cold" back-up purposes, but not for failover or "warm" back-up purposes; (4) remove (or, if the license includes the right to make copies of the Software, fail to include in those copies) any readme files, notices, disclaimers, marks, or labels included in or on the Software and/or any Juniper Platform as delivered by Juniper or any Juniper Authorized Reseller; and shall not (5) Use or allow Use of the Software or Cloud Services in violation of any applicable Law or to support or facilitate any illegal activity.

c) <u>Fulfillment Email and License Activation</u>. To download purchased Software, or Use Cloud Services, End User must register with Juniper by name as the end user of the Software or Cloud Services. Juniper will email a Fulfillment Email to End User's registered email at the time of purchase. End User must provide a designated email address for receipt of any Fulfillment Email on the Purchase Order to Juniper. Juniper shall not be liable for acts and omissions of the Authorized Reseller, including but not limited to, the Authorized Reseller's failure to include End User's proper email address on the Purchase Order to Juniper. The Fulfillment Email will provide End User, or the Authorized Reseller, with details on how to activate and Use the Software or Cloud Services that End User has purchased.

d) <u>Subscription Term</u>. The applicable Subscription Term will be listed in the SKU. The Subscription start date will commence on the date that Juniper sends the Fulfillment Email to End User or End User's agent (including a Juniper Authorized Reseller), if any. The Subscription will end at the expiration of the Subscription Term. Unless agreed to in writing, the Subscription will not automatically renew. For any new Subscription, (i) new Subscriptions can be purchased at any time, provided that such purchases are not for retroactive coverage; and (ii) upon End User's timely renewal of a Subscription, the start date of End User's renewed Subscription Term will be the day following the expiration of its then-current Subscription Term.

e) <u>Expired Subscription Renewals</u>. For all Subscriptions that have lapsed, (i) Subscription renewals will be backdated to the day following the end of the expired Subscription term, and (ii) after a thirty (30) day lapse, access to the Software and/or Cloud Services may be disabled, Cloud Service functionality may be reduced or limited to read only access, and/or End User's right to use will be revoked. If access is disabled due to a lapse of thirty (30) days, then End User must purchase a new Subscription to resume the Cloud Service. Expired Subscription renewals are subject to the Service and Support Inspection and Reinstatement Policy.

f) <u>Non-Commercial Purposes/Trial Terms</u>. Software or Cloud Services that are licensed for non-commercial purposes, including but not limited to trial, demonstration, education, or for End

User's internal testing and lab purposes ("**Non-commercial Purposes**"), shall be offered free of charge until the earlier of (i) cancellation of the free trial of Software or Cloud Services in Juniper's sole discretion and without notice, (ii) expiration of the free trial of Software or Cloud Services, time-limited by Juniper under additional trial terms, (iii) if applicable, the Client Software, is no longer a supported release under an active Service Contract under the terms of this End User Schedule or, to the extent applicable, an accepted agreement for Software support and Maintenance Services between End User and Juniper, or (iv) the start date of any purchased Software or Cloud Services ordered by End User. In no event shall Juniper have any obligation to continue nor any obligation to renew any Software License or Cloud Service Subscription used for Non-commercial Purposes. Software and/or Cloud Services that have been licensed for Non-commercial Purposes shall not be Used in a production environment. Additional trial terms and conditions may appear on an applicable Juniper registration web page. Any such additional terms and conditions are incorporated into this End User Schedule by reference and are legally binding.

g) Federal Government End User Provisions. The Software and Cloud Services herein constitute "commercial items" and include "commercial computer software" and "commercial computer software documentation." Pursuant to Federal Acquisition Regulations 12.211 and 12.212 or Defense Federal Acquisition Regulation Supplement 227.7102-1 and 227.7202-3, as applicable, the U.S. Government shall have only the license rights in technical data, computer software, and computer software documentation specified in this Agreement, and no Authorized Reseller may agree to grant End User any rights in Juniper's technical data inconsistent with this Agreement. Any provisions within this Agreement that are inconsistent with federal procurement regulations are not enforceable against the U.S. Government. If a government agency has a need for rights not conveyed under these terms, it must negotiate with Juniper to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

h) Data Protection.   In connection with End User's use of Software and/or Cloud Services, Juniper collects and uses Processed Data in accordance with the Juniper Privacy Policy. By using the Software and/or Cloud Services, End User agrees to allow Juniper to collect and use Processed Data as contemplated in this Agreement.

6. Supplemental terms for Software

a) Scope. The terms in this Section apply solely to End User's licensing of Software.

b) Software Use. End User may Use the Software on any device that supports it, EXCEPT (i) Software under an Embedded Software License; (ii) for operating system Software that is licensed and purchased separately from the Juniper Platform, which, assuming such operating system Software is under an effective warranty or Maintenance Services agreement, may only be installed and Used on a replacement Juniper Platform (obtained from Juniper or an Authorized Reseller) in

the event of a Hardware failure (with prompt written notice to Juniper); (iii) for Software and its Updates that End User accesses through a Commercial Cloud Service provider acting as an Authorized Reseller or other Juniper-authorized Commercial Cloud Service provider, in which case End User shall be entitled to access and Use only such Software Instance(s) as may be provisioned for End User in the Commercial Cloud Service environment and End User's right to access and Use shall be solely through the Commercial Cloud Service; or (iv) as otherwise agreed to in a written amendment to this End User Schedule or as set forth in any custom terms between the Parties).

c) <u>Software Updates</u>. Juniper grants End User a license and right to use, solely during the Perpetual License term or Subscription Term, Updates made available as part of Maintenance Services contracted for such Software license or Juniper Platform (for Embedded Software Licenses and its associated Feature Set Licenses), for up to the Licensed Units. Each Update, if any, shall be subject to the same terms and conditions as the Software to which such Update pertains.

d) <u>Bundled Software Licensing</u>. If multiple Software products are licensed together as a single license, such Software is licensed to be Used as a bundle and no component of the bundle may be Used on a standalone basis or in combination with another standalone product.

e) <u>Source Code</u>. In the limited event that licensed Software includes source code, such source code is provided for reference purposes only unless expressly licensed otherwise by Juniper or its licensors.

f) <u>Perpetual Licensing</u>. Subject to End User's compliance with the terms of this End User Schedule, Software with a Perpetual License will be licensed to End User for a perpetual License term. The perpetual License term will commence on the date that: (i) for Embedded Software or bundled Software with a Hardware component, the Hardware component is delivered; or (ii) in all other cases, Juniper sends End User the associated Fulfillment Email.

g) <u>License Compliance Management</u>. End User shall track its Use of Juniper Software in order to True Up unlicensed use and/or use of a specific Juniper Licensing model. Such tracking may be managed by the Juniper Agile Licensing ("**JAL**") License Manager tool or by JSAS (Juniper Support Automation Solution) or by End User's manual tracking.

h) <u>Java Trademark Guidelines</u>. End User must: (i) comply with the Java Trademark Guidelines; (ii) not do anything harmful to, or inconsistent with, the rights of the Java Rightsholder; and (iii) assist the Java Rightsholder in protecting and restoring its rights, to the extent that the Software contains Java.

i) <u>Use of Software with Third Party Cloud Services</u>. End User's right of access and Use of the Software as part of a third party cloud service is subject to the ongoing validity and compliance with the applicable third party cloud service terms of use imposed by the third party cloud service

provider. Termination, suspension, or unavailability of the third party cloud service is at End User's own risk and End User acknowledges that Juniper shall have no liability or duty arising out of any such termination, suspension or unavailability. For purposes of clarity, if End User uses the Software with a Juniper Cloud Service, then such Cloud Service will be subject to Section 7 of this Schedule below.

j) Software Warranty Policy. The terms and conditions of the Juniper Product Warranty are available at https://support.juniper.net/support/warranty/.

7. Supplemental terms for Cloud Services

a) Cloud Service Subscriptions. If End User purchases Cloud Services, Juniper will provide End User with a Subscription for non-perpetual Cloud Services, that includes Support Services as defined in the applicable CSD. Juniper reserves all rights, title and interest in and to the Cloud Services, including all related intellectual property rights. No rights are granted to End User hereunder other than as expressly set forth herein.

b) End User's Responsibilities. End User shall (i) require its Users' compliance with this End User Schedule, (ii) if applicable, be solely responsible for the accuracy, quality, integrity and legality of End User Data and of the means by which End User acquired End User Data, (iii) prevent unauthorized access to or use of the Cloud Services, and notify Juniper promptly both orally and in writing of any such unauthorized access or use, (iv) use the Cloud Services only in accordance with the User Guides, CSDs, and applicable Laws, (v) obtain any and all third party consents necessary for the use and processing of End User Data in connection with Cloud Services as contemplated in this Agreement, (vi) if applicable, maintain the supported release of the Client Software and also maintain the Juniper Hardware and/or Software, if any, connected with the Cloud Service under the terms of the applicable Descriptive Content, and (vii), use the Cloud Services with only appropriately licensed and/or Juniper approved third party software and technology. If the Cloud Service is made available as a feature of a Juniper Solution, the Juniper Solution(s) is/are not provided as a part of the Cloud Service and must be purchased separately from Juniper or an Authorized Reseller. To the extent that Cloud Services include security features and functionalities, End User will not rely on the Cloud Services as End User's network's sole, complete, or timely source of protection from network security threats, including but not limited to, Malicious Code.

c) Additional Cloud Service Restrictions. End User shall not (i) authorize or allow any person's or entity's direct or indirect access to the Cloud Services (or make use of the Cloud Services) other than a User or Users acting for End User's sole benefit in furtherance of End User's internal business operations; (ii) use the Cloud Services with third party products other than those for which the Cloud Services were purchased or otherwise intended to be used with the Cloud Services, as provided by Juniper in any of the applicable Documentation, (iii) use the Cloud Services to store

or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (iv) use the Cloud Services to store or transmit Malicious Code (except to the extent that the Cloud Services include malware scanning, security screening or other threat detection features, such as the option for End User to submit custom threat feeds), (v) interfere with or disrupt the integrity or performance of the Cloud Services or third-party data contained therein, attempt to gain unauthorized access to the Cloud Services or their related systems or networks, (vi) permit any third party to access the Cloud Services except as permitted herein; or (vii) allow any individual, entity or organization to gain access to the Cloud Service if End User knows, or has reason to believe, that such individual, entity or organization is (or is acting on behalf of) either (a) any individual, entity or organization identified as a sanctioned party on any list maintained and published by the U.S. Department of Treasury, Office of Foreign Asset Control, or on any similar list of sanctioned parties published by an agency of the US, the EU or any member country of the EU, or (b) an entity or organization 50% or more controlled, directly or indirectly, by a party so listed.

Juniper reserves the right, without liability, to disable End User's access to the Cloud Services in the event of any material breach by End User or its Users or anyone on End User's behalf, of the provisions set forth in this Section.

d) <u>Network Connection</u>. End User shall be solely responsible for procuring and maintaining End User's network connections and telecommunication links from End User's systems to Juniper's servers from which the Cloud Services are accessed. End User shall be solely liable for problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to End User's network connections or telecommunications links, or internet connection.

e) <u>Cloud Service Subscription Activations</u>. For Cloud Services that are purchased as part of a Juniper Solution that includes Hardware, or purchased as standalone Cloud Services, the Subscription Term begins upon delivery of the Fulfillment Email to End User.

f) <u>Cloud Service Subscription Cancellations</u>. Pre-paid Subscriptions to Cloud Services are non-cancellable and non-refundable unless such cancellation is due to Juniper's uncured breach of these terms of this End User Schedule, in which case End User shall be entitled to a pro-rata refund taking into account the remaining term of such Cloud Services at the time of such cancellation.

g) <u>Cloud Services Provided Through Software</u>. Depending upon the Cloud Service purchased, as described within the applicable User Guides, the Cloud Services may be provided through licensed Software which is subject to the End User Software licensing terms in this End User Schedule.

h) <u>Descriptive Content</u>. The scope and details of Cloud Service-specific terms are specified in the applicable Descriptive Content that is attached to or referred to in a Schedule and/or Quote or is made available through the then-current Juniper website. The version of the applicable document

that is effective as of the date of the applicable Quote, shall be deemed incorporated by reference into the Purchase Order.

GLOSSARY

A. Definitions applicable to the General Terms and Conditions

"Address Details" means the Juniper corporate address as set forth at https://www.juniper.net/us/en/contact-us/corporate-counsel/, but does not include any email address (if listed).

"Advanced Services" means the resident engineer services and resident consulting services, as well as other services posted at https://support.juniper.net/support/guidelines/ and provided by Juniper.

"Affiliate" of a party means, any entity and its successors controlled by, controlling, or under common control with, such party, where "control" in any of the foregoing forms means ownership, either direct or indirect, of more than 50% of the equity interest entitled to vote for the election of directors or equivalent governing body. An entity shall be considered an Affiliate only so long as such entity continues to meet the foregoing definition.

"Agreement" has the meaning set forth in the Preamble.

"Agreement Term" has the meaning set forth in Section 3 of the GTC.

"Authorized Reseller" means a reseller of Juniper Hardware, Software, Services and/or Cloud Services that sells Juniper Hardware, Software, Services and/or Cloud Services contracts to End Users pursuant to a valid contract with Juniper to conduct such resale activities.

"Business Partner Code of Conduct" means the code of conduct which is located and accessible at http://www.juniper.net/assets/us/en/local/pdf/additional-resources/business-partner-code-of-conduct.pdf.

"Channel Schedule" means the terms and conditions applicable to Authorized Resellers only.

"Cloud Services" means online services provided over the Internet by Juniper to which Sections 5 and 7 of the End User Schedule applies.

"Codes" means: (a) Juniper's Business Partner Code of Conduct; and (b) any other policies, guidelines or references that Juniper makes available to Company from time to time.

"Company" means the Party referenced in the Preamble purchasing and/or licensing Hardware, Software, Services and/or Cloud Services from Juniper hereunder.

"Compliance Rules" means: (a) Laws; (b) any legislation or regulation with respect to anti-bribery, anti-slavery, anti-corruption (including the U.S. Foreign Corrupt Practices Act and the UK Bribery Act) or anti-terrorism; and (c) any Codes.

"Confidential Information" has the meaning set forth in Section 6 of the GTC.

"CSD" or "Cloud Service Description" means a Cloud Service Description, including but not limited to: the incorporated Support Services with any Cloud Service, Juniper's obligations in providing the Cloud Service, and Cloud Service specific privacy and data protection information posted at http://www.juniper.net/support/guidelines.html and referencing this Agreement as governing terms for the Cloud Services described therein.

"Descriptive Content" means materials, documentation, and information that describes the Hardware, Software, Services, and/or Cloud Services as made available by Juniper from time to time, and includes "Data Sheets," "Service Description Document(s)," or "Cloud Service Description(s)".

"Documentation" in any form whatsoever, means any Juniper manuals, materials, guides, specifications, tables, charts, diagrams, pictures, schematics, plans, methods, reports or testing procedures, and any information required for training or education purposes and includes any updates, changes, or derivatives of any of the foregoing.

"DPA" has the meaning set forth in Section 7 in the GTC.

"Education Services" means training and education services provided by Juniper.

"Effective Date" has the meaning set forth in Section 3 in the GTC.

"End User" means the person or organization that originally purchases, leases or licenses Hardware, Software, Services and/or Cloud Services from Juniper or an Authorized Reseller for use in such person's or organization's own business operations and not for further distribution or sale.

"End User Data" means all information submitted by Company to Juniper and may include third party data that Company submits to Juniper.

"End User Schedule" means the terms and conditions applicable to End Users only.

"Hardware" means the physical components of Juniper's equipment delivered in connection with this Agreement.

"Indemnitees" has the meaning set forth in Section 9 of the GTC.

"IP Claims" has the meaning set forth in Section 10 of the GTC.

"Juniper " means, if Hardware, Software, Services and/or Cloud Services are shipped, rendered, delivered or deployed by Juniper or an Authorized Reseller to a location in: (a) North America, Central America or South America, Juniper Networks (U.S.), Inc; (b) United Kingdom, Juniper Networks (U.K.) Limited; (c) India, Juniper Networks Solution India Private Limited; (d) Australia, Juniper Networks Australia Pty Ltd; or where a location is not listed above, Juniper Networks International B.V., and in the case of on-site Services, exclusively means the local Juniper Contracting Entity.

"Juniper Contracting Entity" means the Affiliate of Juniper that is the Juniper signatory to the Statement of Work.

"Juniper Privacy Policy" means the Juniper Privacy Policy posted at the following URL: https://www.juniper.net/us/en/privacy-policy/.

"Laws" means laws, ordinances, codes, rules, standards, and regulations of any territory or jurisdiction.

"Maintenance Services" means the technical support services and maintenance provided by Juniper as fully described in the applicable SDD or CSD.

"Onboarding Information" means information that Juniper provides to the Company (as updated from time to time) for the purposes of transacting under this Agreement and, in the case where Company provides information to Juniper, may include End User Data.

"Online Policies, Guidelines and Procedures" means, without limitation, any policies, guidelines, or procedures, that are applicable to any Hardware, Software, Cloud Services, and Services, or that are referenced in this Agreement and that are posted at Juniper's website, www.juniper.net.

"Party" and "Parties" have the meaning set forth in the Preamble.

"Professional Services" means plan, build, migration and optimization services set forth in a Statement of Work.

"Purchase Order" or "Order" means an Order issued to and accepted by Juniper which is fully authorized by a Company representative and subject to the terms and conditions of this Agreement.

"Purchase Order Requirements" means the Purchase Order Requirements located at https://partners.juniper.net/partnercenter/sales/product-ordering/.

"Preamble" means the terms and conditions contemplated before Section 1 of the GTC.

"Quote" means a Juniper quotation issued to the End User or the Authorized Reseller.

"Receiving Party" has the meaning set forth in Section 6 of the GTC.

"Schedule" means the Channel Schedule and/or the End User Schedule attached to these General Terms and Conditions.

"SDD" or "Services Description Document" means a Services Description Document posted at http://www.juniper.net/support/guidelines.html and referencing this Agreement as governing terms for the services described therein.

"Services" means collectively Maintenance Services, Advanced Services, Education Services, and Professional Services.

"Shipping Terms Exhibit" has the meaning set forth in Section 4 of the GTC.

"Special Terms" has the meaning set forth in Section 2 of the GTC.

"Software" means the Juniper machine-readable object code and accompanying activation keys, if any, made available under this Agreement, whether incorporated in the Hardware (e.g., firmware) or delivered separately, and includes Software Releases and any Updates of that Software the End User is entitled to through Maintenance Services.

"Software Release" means a new production version of the Software.

"Statement of Work" or "SOW" means the scope and details of customized Professional Services documented in a mutually agreed to Statement of Work entered into in connection with this Agreement.

"Supported Release" means the version of the Software and certain prior versions of the Software as set forth in Juniper's then current EOL/EOS Policies.

"Tax" or "Taxes" means all taxes, levies, imposts, all custom duties, tariffs, import fees, fines or other charges of whatsoever nature however imposed by any jurisdiction, country or any subdivision or authority thereof in any way connected with this Agreement or any instrument or agreement required hereunder, and all interest, penalties or similar liabilities with respect thereto, except such taxes as are imposed on or measured by a Party's net income or property.

"Update" is defined in the Service Description Document that pertains to the Maintenance Services purchased or included with the Software, as applicable.

B. **Definitions applicable to the End User Schedule**

"Approved Source" means Juniper or an Authorized Reseller.

"Client Software" means the portion of the Software which enables End User to access, manage or utilize the Cloud Service.

"Commercial Cloud Service(s)" means a service offered and administered by Juniper, or an authorized third party, whereby End User may without downloading or otherwise taking

delivery of a copy of the Software use and access Instances of Software running in a virtual machine environment resident in a networked cloud facility or group of facilities.

"Embedded Software" means the operating system Software pre-installed on the Juniper Platform, and is required for the proper functioning of the Juniper Platform and/or for the proper functioning of the cloud services purchased in connection with the Juniper Platform.

"Embedded Software Licenses" means the limited right to Use the Embedded Software and included in the purchase of the Juniper Platform but does not include the right to Use Separately Licensable Features and may not be used in excess of the Licensed Units identified in the SKU for the Juniper Platform. Embedded Software Licenses are Perpetual unless the Juniper Hardware is leased or provided for demonstration purposes, in which case the Embedded Software License term shall follow the lease term or demonstration period and shall terminate automatically upon the expiration of the lease term or demonstration period.

"Embargoed Region" means a country or region subject to comprehensive embargo under US or Netherlands law or regulation or that is classified under US Export Administration Regulations (EAR) as a Group E:1 or E:2 country (see US EAR Supplement No. 1 to Part 740). Regions qualifying under this definition of Embargoed Region as of January 2018 include Cuba, Iran, North Korea, Syria, and the region of Crimea.

"End User Data" means all information submitted by End User to the Cloud Services and may include third party data that End User submits to the Cloud Services.

"EOL/EOS Policies" means policies and guidelines published at https://www.juniper.net/support/eol/# pertaining to product end of life notifications, last order date, end of engineering support, end of support, and like product end of life milestones for Juniper Hardware, Software, Services, and/or Cloud Services.

"Feature Set License" means the limited right to Use solely the certain set of features and functionalities of the Software as described in the Fulfillment Email and SKU, regardless of whether any additional feature or functionality is unlocked and thus accessible to End User in the Software. Feature Set Licenses may also be combined with other Juniper Software licenses.

"Fulfillment Email" means the email document that confirms the End User's purchase of the Software Licenses and/or the Cloud Service for the associated Subscription Term, SKU(s) and, if applicable, contains the activation code or license key, respectively for Software Licenses and/or the Cloud Service, and may be sent by Juniper to (i) the End User directly; or (ii) the Authorized Reseller transacting with the End User.

"Instance" means each time the Software runs on any device.

"Java Rightsholder" means Oracle America, Inc.

"Java Trademark Guidelines" are available at http://www.oracle.com/us/technologies/java/java-licensing-logo-guidelines-1908204.pdf.

"Juniper Platform" means any Juniper-provided, but not any third-party-provided, Hardware.

"Juniper Solutions" has the meaning set forth in Section 1 of the End User Schedule.

"License Metric" means a unit of measurement that restricts the scope of use of the Software (e.g., Feature Set License, Instance, Network Element or Node, Session Socket or CPU Socket or Throughput or any other unit of measurement set forth in a SKU) or Fulfillment Email).

"License Term" means the period of time that the Software is licensed to be Used by End User, subject to the terms and conditions of this Agreement.

"Licensed Units" mean a number of units under a License Metric that limits the Use of the licensed Software or use of the Cloud Services (e.g. 10M, 50 Nodes, 1000 Sessions or any other units under a License Metric set forth in a SKU or Fulfillment Email) as set forth in the Fulfillment Email.

"Malicious Code" means viruses, worms, time bombs, trojan horses and other harmful or malicious code, files, scripts, agents, programs, or any identifying information or other metadata associated with them, such as suspected malicious website, URL, or IP addresses.

"Network Element" or "Node" means a physical or virtual device that is recognizable by the Software as a unique device that the Software may directly or indirectly administer, monitor, manage, provision, or configure.

"Non-commercial License" means Software that is used for Non-commercial Purposes.

"Non-commercial Purposes" has the meaning set forth in Section 7.

"Perpetual License" means a license that continues until the first to occur of termination by Juniper or End User's violation of any term or condition of this Agreement, unless such violation is waived in writing by Juniper, and does not include a Subscription License or a Non-commercial License.

"Processed Data" means information about End User's devices or systems generated or otherwise provided in connection with End User's usage of the Cloud Service, as well as any network management information or configuration data generated or otherwise provided from the use of End User's Processed Data with the Cloud Service.

"Separately Licensable Features" means specific features and functionalities of the Software that may only be Used if a Feature Set License is obtained and such features and functionalities are expressly set forth in a SKU) or Fulfillment Email.

"Session" means a stateful information exchange connection established for communication between two devices through a gateway.

"Service and Support Inspection and Reinstatement Policy" means Juniper's Service and Support Inspection and Reinstatement Policy that can be accessed at https://support.juniper.net/support/pdf/guidelines/990222.pdf.

"Service Contract" means a Services Description Document ("SDD") or Cloud Services Description ("CSD") posted at http://www.juniper.net/support/guidelines.html and referencing the specific terms for Services ("EUSA") as governing terms for the Services described therein.

"SKU" means a stock-keeping unit or unique identifier for each distinct product and service that can be purchased and any summary description of such product or service associated therewith.

"Socket" or "CPU Socket" means a mechanical component that provides electrical connectivity between a microprocessor and a printed circuit board.

"Subscription" means a license to Use the Software and/or Cloud Services with accompanying Maintenance Services solely during a fixed Subscription Term, unless terminated earlier by Juniper pursuant to the terms and conditions of this Agreement.

"Subscription Term" means the period of time during which a Software subscription or Cloud Services subscription is active, as set forth in the Fulfillment Email.

"Support Services" means collectively Maintenance Services, Advanced Services, and Education Services.

"Throughput" means the maximum possible bits of inbound data traffic capable of being processed per second by an Instance of Software. A Throughput license may not be split across multiple Instances. Throughput licenses will be identified in the SKU description and Fulfillment Email in units of megabits per second (Mbps or M), gigabits per second (Gbps or G), or terabits per second (Tbps or T). In the event Juniper Software supports bursts, the actual Throughput must not exceed the licensed Throughput more than 5% of the time across any arbitrary set of five (5) minute sample intervals during the License Term.

"True Up" means an End User accounting and payment for all deployments or Use of unpurchased or unlicensed Juniper Hardware, Software, Services and/or Cloud Services.

"Update" is defined in the Service Description Document that pertains to the Maintenance Services purchased or included with the Software, as applicable.

"Use" and "Used" means, in the case of: (i) Software, to install, utilize, access, activate, or view the Software in executable form; or (ii) Cloud Service, to access or consume that Cloud Service.

"User Guide" means the online user guide, technical guide, data sheets, and/or CSD for the Cloud Services, accessible via a Juniper designated website as updated from time to time.

"Users" means individuals who are authorized by End User to use on End User's behalf the Software or Cloud Services for which Subscriptions have been purchased by End User or as part of a free trial. Users may include, but are not limited to: End User, employees, consultants, contractors and agents with which End User transacts business.

Appendix E
Business Associate Addendum

WHEN APPLICABLE, THIS BAA SHALL BE INCORPORATED INTO A PURCHASE ORDER REQUIRING THE MANUFACTURER TO STORE PHI ON BEHALF OF CITY

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

RECITALS

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

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

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

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

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

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

   1. Definitions.

      a. Breach means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information, and shall have the meaning given to such term under the HITECH Act and HIPAA

Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402], as well as California Civil Code Sections 1798.29 and 1798.82.

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

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

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

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

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

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

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

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

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

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

and 164.501. For the purposes of this BAA, PHI includes all medical information and health insurance information as defined in California Civil Code Sections 56.05 and 1798.82.

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

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

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

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

2. **Obligations of Business Associate.**

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

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

c. **Permitted Uses.** BA may use, access, and/or disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of

BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.502, 164.504(e)(2). and 164.504(e)(4)(i)].

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

        e. Prohibited Uses and Disclosures. BA shall not use or disclose Protected Information other than as permitted or required by the Agreement and BAA, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the Protected Information solely relates [42 U.S.C. 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 Goods provided pursuant to the Agreement.

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

        g. Business Associate's Subcontractors and Agents. BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with

respect to such PHI and implement the safeguards required by paragraph 2.f. above with respect to Electronic PHI [45 C.F.R. 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.

h. Accounting of Disclosures. Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least seven (7) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, 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.

i. Access to Protected Information. BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within (5) days of request by CE to enable CE to fulfill its obligations under state law [Health and Safety Code 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.

j. Amendment of Protected Information. Within ten (10) days of a request by CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA and its agents and subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment or other documentation to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual request 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)].

k. Governmental Access to Records. BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes

of determining BA's compliance with HIPAA [45 C.F.R. 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.

l. 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.

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

n. Notification of Breach. BA shall notify CE within 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)]

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

3. **Termination.**

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

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

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

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

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

4. Amendment to Comply with Law.

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

5. Reimbursement for Fines or Penalties.

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

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

BAA ATTACHMENT 1

Contractor Name:		Supplier ID	

PRIVACY ATTESTATION – WHEN APPLICABLE, TO BE COMPLETED BY MANUFACTURER UPON REQUEST BY CITY AT THE TIME OF PURCHASE ORDER ISSUANCE

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

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

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

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

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

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

DATA SECURITY ATTESTATION – WHEN APPLICABLE, TO BE COMPLETED BY MANUFACTURER UPON REQUEST BY CITY AT THE TIME OF PURCHASE ORDER ISSUANCE

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

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

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

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

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

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

San Francisco Ethics Commission

25 Van Ness Avenue, Suite 220, San Francisco, CA 94102
Phone: 415.252.3100 . Fax: 415.252.3112
ethics.commission@sfgov.org . www.sfethics.org

Received On:

File #: 211228

Bid/RFP #: 0000005930

Notification of Contract Approval

SFEC Form 126(f)4
(S.F. Campaign and Governmental Conduct Code § 1.126(f)4)
A Public Document

Each City elective officer who approves a contract that has a total anticipated or actual value of $100,000 or more must file this form with the Ethics Commission within five business days of approval by: (a) the City elective officer, (b) any board on which the City elective officer serves, or (c) the board of any state agency on which an appointee of the City elective officer serves. For more information, see: https://sfethics.org/compliance/city-officers/contract-approval-city-officers

1. FILING INFORMATION	
TYPE OF FILING	DATE OF ORIGINAL FILING (*for amendment only*)
Original	
AMENDMENT DESCRIPTION – Explain reason for amendment	

2. CITY ELECTIVE OFFICE OR BOARD	
OFFICE OR BOARD	NAME OF CITY ELECTIVE OFFICER
Board of Supervisors	Members

3. FILER'S CONTACT	
NAME OF FILER'S CONTACT	TELEPHONE NUMBER
Angela Calvillo	415-554-5184
FULL DEPARTMENT NAME	EMAIL
Office of the Clerk of the Board	Board.of.Supervisors@sfgov.org

4. CONTRACTING DEPARTMENT CONTACT	
NAME OF DEPARTMENTAL CONTACT	DEPARTMENT CONTACT TELEPHONE NUMBER
Norman Liang	415-554-4639
FULL DEPARTMENT NAME	DEPARTMENT CONTACT EMAIL
OCA Office of Contract Administration	norman.liang@sfgov.org

5. CONTRACTOR	
NAME OF CONTRACTOR Intervision Systems LLC	**TELEPHONE NUMBER** 408-567-4200
STREET ADDRESS (including City, State and Zip Code) 2270 Martin Avenue, Santa Clara, CA 95050	**EMAIL** tcallagy@intervision.com

6. CONTRACT

DATE CONTRACT WAS APPROVED BY THE CITY ELECTIVE OFFICER(S)	ORIGINAL BID/RFP NUMBER 0000005930	FILE NUMBER (*If applicable*) 211228

DESCRIPTION OF AMOUNT OF CONTRACT

$40,000,000

NATURE OF THE CONTRACT *(Please describe)*

This contract is a citywide procurement of networking hardware manufactured by Juniper Networks Inc. (Juniper), as well as accompanying networking software and standard hardware/software support.

7. COMMENTS

8. CONTRACT APPROVAL

This contract was approved by:

☐	**THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM**
☒	**A BOARD ON WHICH THE CITY ELECTIVE OFFICER(S) SERVES** Board of Supervisors
☐	**THE BOARD OF A STATE AGENCY ON WHICH AN APPOINTEE OF THE CITY ELECTIVE OFFICER(S) IDENTIFIED ON THIS FORM SITS**

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
1	Lerner	Jonathan	CEO
2	Lee	Jamie	Other Principal Officer
3	Gray	John	Other Principal Officer
4	Lerner	Jonathan	Board of Directors
5	Dokas	Elias	Board of Directors
6	Bishop	Noah	Board of Directors
7	Mogk	Peter	Board of Directors
8	Rassel	Brian	Board of Directors
9	Bradley	Matt	Board of Directors
10	MidOcean Partners		Shareholder
11	Huron Capital Partners		Shareholder
12			
13			
14			
15			
16			
17			
18			
19			

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
20			
21			
22			
23			
24			
25			
26			
27			
28			
29			
30			
31			
32			
33			
34			
35			
36			
37			
38			

9. AFFILIATES AND SUBCONTRACTORS

List the names of (A) members of the contractor's board of directors; (B) the contractor's principal officers, including chief executive officer, chief financial officer, chief operating officer, or other persons with similar titles; (C) any individual or entity who has an ownership interest of 10 percent or more in the contractor; and (D) any subcontractor listed in the bid or contract.

#	LAST NAME/ENTITY/SUBCONTRACTOR	FIRST NAME	TYPE
39			
40			
41			
42			
43			
44			
45			
46			
47			
48			
49			
50			

☐ Check this box if you need to include additional names. Please submit a separate form with complete information. Select "Supplemental" for filing type.

10. VERIFICATION

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information I have provided here is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SIGNATURE OF CITY ELECTIVE OFFICER OR BOARD SECRETARY OR CLERK	DATE SIGNED
BOS Clerk of the Board	

City and County of San Francisco
London N. Breed, Mayor

Office of the City Administrator
Carmen Chu, City Administrator
Sailaja Kurella, Acting Director
Office of Contract Administration/Purchasing

DATE: November 19, 2021

TO: Angela Calvillo, Clerk of the Board

FROM: Sailaja Kurella, Acting Director of Office of Contract Administration (OCA) and Purchaser

SUBJECT: Resolution to approve Term Contract 91115 –Networking Equipment, Software and Hardware/Software Support

Enclosed is the resolution authorizing execution of Term Contract 91115 consisting of:

(1) Contract 1000023748 with Intervision Systems LLC for the purchase of networking equipment, software and hardware/software support manufactured by Juniper Networks Inc. (Juniper), with a contract not-to-exceed (NTE) amount of $40 million and a total contract duration of five years;

(2) Contract 1000023749 with Softnet Solutions LLC for the purchase of networking equipment, software and hardware/software support manufactured by Hewlett Packard Enterprise (HPE) Company, with a contract not-to-exceed (NTE) amount of $10 million and a total contract duration of five years; and

These two contracts are being awarded pursuant to a solicitation conducted on September 20, 2021 by the Office of Contract Administration (OCA) for the purchase of networking equipment, software and hardware/software support manufactured by three manufacturers: Juniper, HPE and Aruba. The solicitation resulted in the award of three contracts, one for each manufacturer, two of which exceed $10,000,000. The contracts are limited solely to hardware, software and standard software/hardware support. They do not include professional services or technical services beyond standard support. The NTE amount for each contract is based on City's projected total five-year spend from each manufacturer based on prior spend rates and upcoming projects.

Each contract offers each manufacturer's full range of product offerings at significant cost savings to City departments by providing catalogue discounts off the company's extensive inventory. Depending on the total volume being purchased at the time of any transaction, City will be able to negotiate deeper discounts than these minimum discounts. The Minimum Discounts offered for each manufacturer are set forth in Exhibit 1.

Approval of these contracts is justified for several reasons, which are summarized below:

(1) **Essential Hardware, Software and Support:** These contracts are critical for satisfying City departments' needs for essential networking equipment, software and hardware/software support.

(2) **Competition:** The City currently has a contract with ConvergeOne Holdings Corp. for the purchase of networking equipment, software and hardware/software support manufactured by Cisco Systems Inc. in the amount of $65,000,000. By entering into additional contracts for networking equipment, software and hardware/software support manufactured by Juniper, HPE and Aruba, City will ensure adequate competition between all major manufacturers of networking equipment. Greater competition, in turn, will ensure City is able to obtain more competitive pricing when purchasing products offered by all four manufacturers.

(3) **Consistent City Terms and Conditions:** The contract terms and conditions of each contract reflects the same terms and conditions agreed to by ConvergeOne Holdings Corp. for the purchase of networking

1 Dr. Carlton B. Goodlett Place, Room 430
San Francisco CA 94102-4685
www.sfgov.org/oca
www.SFGSA.org

Page 1

Tel. (415) 554-6743
Fax (415) 554-6717
Email: oca@sfgov.org
Or Dial 3-1-1

City and County of San Francisco
London N. Breed, Mayor

Office of the City Administrator
Carmen Chu, City Administrator
Sailaja Kurella, Acting Director
Office of Contract Administration/Purchasing

equipment, software and hardware/software support manufactured by Cisco Systems Inc. Through this process, therefore, City shall ensure all network equipment purchased by City will be subject to the same City terms and conditions, regardless of the manufacturer and reseller.

(4) **Increased Efficiencies and Improved Reporting:** Approval of this resolution will allow City departments to procure such goods in a streamlined, cost-efficient manner that ensures competitive pricing. In fact, by purchasing each manufacturer through a single value added reseller for that manufacturer, City will be able to better track, analyze and report its purchases, something it cannot do right now because these purchases are made through multiple resellers on an ad hoc basis.

If you have any questions or require additional information, please contact Gloria Yuen on my team at 415-554-6258.

Enclosures:
1. Contract 1000023748 (Intervision Systems LLC)
2. Contract 1000023749 (Softnet Solutions LLC)
3. SFETH Form 126(f)2 - Contract 1000023748 (Intervision Systems LLC)
4. SFETH Form 126(f)2 - Contract 1000023749 (Softnet Solutions LLC)
5. SFETH Form 126(f)4 - Contract 1000023748 (Intervision Systems LLC)
6. SFETH Form 126(f)4 - Contract 1000023749 (Softnet Solutions LLC)
7. Resolution - Contract 1000023748 (Intervision Systems LLC)
8. Resolution - Contract 1000023749 (Softnet Solutions LLC)

1 Dr. Carlton B. Goodlett Place, Room 430
San Francisco CA 94102-4685
www.sfgov.org/oca
www.SFGSA.org

Page 2

Tel. (415) 554-6743
Fax (415) 554-6717
Email: oca@sfgov.org
Or Dial 3-1-1

City and County of San Francisco
London N. Breed, Mayor

Office of the City Administrator
Carmen Chu, City Administrator
Sailaja Kurella, Acting Director
Office of Contract Administration/Purchasing

Exhibit 1
Minimum Discounts off of Manufacturer's List Price

JUNIPER	
Product Family	Minimum % Discount Off of Juniper's List Price
EX switches	59.00%
EX MP based switches	59.00%
QFX 5K series Switches	63.00%
QFX 10K series switches	63.00%
Switch Licenses (EX and QFX)	45.00%
MX Series Router Bundle	68.00%
MX Series MPC cards	68.00%
Optics	80.00%
Cables and auxiliary items	59.00%
Support (Discounting includes all SVC sku's)	10.00%
Mist wireless - Includes pricing for all AP's and accessories	32.50%
Mist Cloud subscription and services - Includes all subscriptions and services	10.00%

HPE		
Category	Product Family	Minimum % Discount Off of HPE's List Price
Brocade	SAN (Fibre Channel)	44.00%
dHCI	Nimble/Hyperconverge	44.00%
Qumulo	NAS Storage	44.00%
SimpliVity	Hyperconverge	44.00%
Storage	Nimble	44.00%
StoreOnce	Backup	32.00%
StoreOnce 2XXXX/3XXXX	Backup	33.00%
Tape Drives	Backup	33.00%
Tape Drives & Autoloaders	Backup	33.00%
Tape Libraries	Backup	33.00%
x86 Server	Proliant 2-Socket Blade Servers	33.00%
x86 Server	Proliant 2-Socket Rack Servers	35.00%
x86 Server	Proliant 4-Socket Blade Servers	33.00%
x86 Server	Proliant 4-Socket Rack Servers	35.00%

1 Dr. Carlton B. Goodlett Place, Room 430   Tel. (415) 554-6743
San Francisco CA 94102-4685   Page 3   Fax (415) 554-6717
www.sfgov.org/oca   Email: oca@sfgov.org
www.SFGSA.org   Or Dial 3-1-1

City and County of San Francisco
London N. Breed, Mayor

Office of the City Administrator
Carmen Chu, City Administrator
Sailaja Kurella, Acting Director
Office of Contract Administration/Purchasing

x86 Server	Proliant Blade Enclosures	33.00%
dHCI	Nimble/Hyperconverge	30.00%
Storage	Nimble	30.00%
x86 Server	Proliant 2-Socket Blade Servers	42.00%
x86 Server	Proliant 2-Socket Rack Servers	33.00%
x86 Server	Proliant 4-Socket Blade Servers	33.00%
x86 Server	Proliant 4-Socket Rack Servers	33.00%
x86 Server	Proliant Blade Enclosures	33.00%
Veeam	Backup Software	33.00%
dHCI	Nimble/Hyperconverge	43.00%
Storage	Nimble	30.00%
x86 Server	Proliant 2-Socket Blade Servers	30.00%
x86 Server	Proliant 2-Socket Rack Servers	30.00%
x86 Server	Proliant 4-Socket Blade Servers	30.00%
x86 Server	Proliant 4-Socket Rack Servers	30.00%
x86 Server	Proliant Blade Enclosures	30.00%

1 Dr. Carlton B. Goodlett Place, Room 430
San Francisco CA 94102-4685
www.sfgov.org/oca
www.SFGSA.org

Page 4

Tel. (415) 554-6743
Fax (415) 554-6717
Email: oca@sfgov.org
Or Dial 3-1-1