

1 [Administrative Code - Content and Data Subscriptions]

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3 **Ordinance amending the Administrative Code to allow City departments to purchase**
4 **content and data subscriptions without complying with solicitation requirements that**
5 **would otherwise apply, and without adhering to provisions in the Municipal Code that**
6 **impose obligations on contracting parties as a condition to agreement with the City;**
7 **and to list conditions required for amendment or modification of such agreements.**

8 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
9 **Additions to Codes** are in *single-underline italics Times New Roman font*.
10 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
11 **Board amendment additions** are in double-underlined Arial font.
12 **Board amendment deletions** are in ~~strikethrough Arial font~~.
13 **Asterisks (* * * *)** indicate the omission of unchanged Code
14 subsections or parts of tables.

15 Be it ordained by the People of the City and County of San Francisco:

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17 Section 1. Chapter 21 of the Administrative Code is hereby amended by revising
18 Section 21.30, to read as follows:

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20 **SEC. 21.30. AGREEMENTS FOR SOFTWARE LICENSING, SUPPORT, ESCROW,**
21 **FINANCE, AND EQUIPMENT MAINTENANCE AGREEMENTS, AND CONTENT AND DATA**
22 **SUBSCRIPTION.**

23

24 (a) The Board of Supervisors ("*BOS*") hereby approves the execution of perpetual,
25 nonexclusive software licensing agreements which warrant performance of the software
according to specifications and which are for an amount of less than *\$10 ten million dollars*,
including any associated escrow agreement for source code or finance agreement, without
further *BOS Board* approval.

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(b) Software licensing procurements are not subject to the contracting requirements of
the Administrative, Labor and Employment, or Environment Codes, but shall be subject to the

1 requirements established by ~~§~~subsection 21.03(j) and Chapter 67 *of the Administrative Code*.
2 For the purpose of this ~~§~~Section 21.30, software licensing procurements shall be deemed to
3 include both the licensed software product, any escrow agreement for source code, finance
4 agreements, and support services for such product where support for that product is available
5 only from the licensor.

6 (c) Agreements for the development of software shall include acceptance testing of
7 the software and/or performance criteria, and shall condition payments on successful
8 completion of the acceptance test or satisfaction of the performance criteria specified in the
9 contract.

10 (d) Where a vendor has proprietary rights to software or where maintenance of
11 equipment by a particular vendor is required to preserve a warranty, software support and
12 equipment maintenance agreements entered into with that vendor shall be treated as a sole
13 source for the purposes of any contract requirements included in the Municipal Code.

14 (e) A Contracting Officer is authorized to make payment for software license fees and
15 software support, equipment maintenance, ~~and~~ associated escrow and finance fees, and
16 content and data subscriptions, in advance of receiving services under a contract.

17 (f) Content and data subscription procurements and resulting contracts are not subject to
18 provisions of the Municipal Code, including but not limited to the Administrative, Labor and
19 Employment, Environment, or Police Codes imposing obligations or other restrictions on contractors,
20 with the exception of the Campaign and Governmental Conduct Code. Content and data subscription
21 procurements are exempt from the solicitation requirements of Chapters 21 and 14B. For the purposes
22 of this subsection (f), content and data subscription procurements shall include procurements where the
23 City is seeking to purchase usage rights to review, download, or republish proprietary content,
24 including but not limited to digital content, digital databases, digital media libraries, or print media.
25 Content and data subscription procurements shall not include contracts where public funds are

1 expended in violation of Administrative Code Chapter 12G or where personal information is disclosed
2 in violation of Administrative Code Chapter 12M.

3 (g) Contracts resulting from software licensing procurements and content and data subscription
4 procurements may only be altered or modified through a contract amendment executed in the same
5 manner as the original contract. Any contract clause or click-to-accept terms appearing to product
6 users that purport to bind the City to new, updated, or dynamic terms that materially alter the
7 obligations stated in the agreement shall be null and void.

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9 Section 2. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor’s veto of the ordinance.

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14 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the “Note” that appears under
19 the official title of the ordinance.

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21 APPROVED AS TO FORM:
22 DAVID CHIU, City Attorney

23 By: /s/ Gus Guibert
24 GUSTIN R. GUIBERT
Deputy City Attorney

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