Contract: Fiscal Year (FY) 2024/25 Renewal of Maintenance/Technical Support Service Agreements for Citywide Information Technology Related Software and Hardware [Published for 10-Day Review 06/07/2024]

Location: Citywide

Recommendation: Pass a Motion authorizing the City Manager or the City Manager’s designee to:
1) renew the annual software license and subscriptions, hardware and software maintenance, and technical support service agreements with Atlassian, County of Sacramento, Elite (formerly Thomsan Reuters Elite), EMC Corporation, EnChoice-CYA Technologies, ESRI Inc., FDM Software, Generis Corp, Greyheller, LLC (doing business as (DBA) Appssian), Ipro Tech, LLC, Oracle America, SalesForce, Site Improve, Source Code Technology Holdings/Ninetex USA, Inc, for a cumulative total amount not-to-exceed $3,140,000; 2) execute Supplemental Agreement numbers: a) 2019-0249-06 with Enterprise Networking Solutions, Inc. for ServiceNow application maintenance support for an amount not-to-exceed $100,000; b) PRC000753-06 with Full Stack Labs for 311 mobile applications support services for an amount not-to-exceed $25,000; c) 2022-0356-05 with Full Stack Labs for an amount not-to-exceed $120,000; d) 2022-1006-002 with Impact Innovations Systems, Inc. for Citywide Content Management System upgrade and enhancement services for an amount not-to-exceed $120,000; e) 2022-038-02 with Infinity Technologies for the support of ongoing GIS maintenance, support and services for an amount not-to-exceed $150,000; f) 2018-1576-06 with Innovyz/AutoDesk, Inc. for utility asset management software maintenance for an amount not-to-exceed $105,000; g) 2015-1310-07 with RCW for Hyperion application support services for an amount not-to-exceed $95,300; h) 2021-0218-04 with SmartERP for applications support services for an amount not-to-exceed $120,000; i) 2020-0397-04 with Tyler Technologies for electronic police citation software maintenance for an amount not-to-exceed $335,000; j) 2019-0684-06 with Visionary Integration Professional (VIP) for Salesforce application support services for an amount not-to-exceed $100,000 and k) PRC000824-05 with Western Advance Technology for K2 application support services for an amount not-to-exceed $300,000; 3) execute new agreements: a) with Adlib Publishing Systems, Inc. for document transformation software with automatic renewal periods; b) with the County of Sacramento for FY2024/25 access to the California Law Enforcement Telecommunications System for an amount not-to-exceed $394,068; c) with EnergyCAP for energy management and accounting software products and services for an amount not-to-exceed $180,036 with automatic renewal periods.
Description/Analysis

Issue Detail: In May 2024, the City’s Information Technology (IT) Department conducted an annual review of all citywide IT-related software licenses, systems, and maintenance/technical services purchased in FY2023/24. The review indicated that the City has ongoing agreements which must be renewed to continue necessary services from multiple vendors where the annual expenditures per vendor exceed $100,000, some of which exceed $250,000. Sacramento City Code sections 3.56.290 and 3.64.040 require Council authorization for purchases of and leases for $250,000 or more. These purchases are necessary to ensure the continued delivery of programs and services citywide to support required computer hardware and software maintenance for critical enterprise and business systems, and technology infrastructure that directly support city business operations. Without this support, city systems would not receive the necessary upgrades, patches, and support needed to function properly making the City more vulnerable to information security breaches and susceptible to dangerous viruses and other malware that could quickly result in a total shutdown of most computer systems.

Staff recommend increasing the spending authority to cover the annual renewal of software licenses, and software and hardware system maintenance and support services agreements with the vendors listed in Attachment 2.

Policy Considerations: The recommendations in this report are in accordance with the goals, objectives, initiatives and operating principles of the IT Department, Sacramento City Code chapters 3.56, 3.64, and 3.68, and Administrative Policy Nos. 4001, 4104 and 4102.

The Sacramento City Code Section 4.04.020 and Council Rules of Procedure (Chapter 7, Section E.2.d) mandate that unless waived by a 2/3 vote of the City Council, all labor agreements, and all agreements greater than $1,000,000 shall be made available to the public at least ten (10) days prior to council action. This item was published for 10-day review on June 7, 2024, in compliance with the City Code.
Economic Impacts: None.

Environmental Considerations:

California Environmental Quality Action ("CEQA"): The recommended action is not a “project” that is subject to the California Environmental Quality Action ("CEQA") because it is an administrative activity that will not result in direct or indirect physical changes in the environment and involve continuing administrative or maintenance activities. (CEQA Guidelines section 15378(a), (b)(2), and (b)(5).)

Sustainability: Under Phase 1 of the City of Sacramento’s Climate Action Plan, all applicable “Green” technology initiatives will be considered prior to the purchase of IT equipment hardware and software.

Commission/Committee Action: Not applicable.

Rationale for Recommendation: During the third quarter of each fiscal year, IT staff performs a review of IT purchases completed during that year and compares that against the amount approved by Council for that fiscal year. In certain situations, where the overall total or individual limit by the vendor is expected to exceed the approved amounts, or in cases involving unanticipated purchases of IT hardware, software and/or services, individual spending requests will be prepared for Council’s approval. Although annual contract amounts may fluctuate, Council has approved an average of $6 million per year for software licenses and maintenance/technical support services over the past five years.

The vendors listed in Attachment 2 have met the City’s policy requirements for contracting and are providing licenses and ongoing support services for City software and hardware systems to support on-going technology services through agreements that were previously approved by Council or through the City’s regular procurement process. The license and support service agreements identified in Attachment 2 provide the required support for several of the City’s most critical business systems. To increase efficiency, the IT Department has determined that it is in the City’s best interest to present this request for spending authority in an annual consolidated fashion rather than preparing multiple requests throughout the year.

Financial Considerations: The request for authority to renew the software licenses, software and hardware system maintenance, support service, and execute new agreements identified in Attachment 2 will create a new not-to-exceed amount of $5,284,404. Staff have spent considerable time negotiating with all suppliers to minimize or, where possible, eliminate these annual increases. At such time that the overall total or individual limit by a vendor exceeds the amounts in the approved motion, or in cases involving unanticipated purchases, separate Council authorization will be
requested. Funding for the renewal of ongoing license and maintenance/operational support services is included in the FY2024/25 Approved Operating Budget and various Capital Improvement Program budgets.

**Local Business Enterprise (LBE):** Where applicable, the City’s LBE program requirements have been followed for any contracts issued by the City under this report.
### FY 25 - IT Technical Support and Maintenance Contracts

1. The annual software license and subscriptions, hardware and software maintenance, and technical support service agreements will be increased for the suppliers listed below:

<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Atlassian</td>
<td>$30,000</td>
<td>Annual Jira Software license maintenance.</td>
</tr>
</tbody>
</table>
| County of Sacramento               | $1,650,000 | 800 MHz radio system user fees for the Sacramento Regional Radio Communication System (SRRCS) ($1,550,000) – City Agreement 2010-1010.  
Web Geographic Information Systems and other IT systems ($100,000) – City Agreement 2013-0453 /2023-0729 |
<p>| Elite (Formerly Thomson Reuters)   | $37,000    | Prolaw Software Maintenance and Upgrades for City Attorney’s Office. City Agreement 2000-0505 including all supplements. |
| EMC Corporation/OpenText           | $130,000   | Software license, maintenance, and technical support for the Citywide Content Management System (CCM). City Agreement 2007-1203-A. |
| EnChoice-CYA Technologies          | $6,000     | Software license, maintenance, and technical support for CYA software.        |
| ESRI Inc.                          | $10,000    | Software license, maintenance, and technical support for ESRI software. City Agreement 2023-0737. |
| FDM Software, Ltd                  | $150,000   | Software license, maintenance, and technical support for the Fire Department Records Management System. City Agreement 2005-0058. |
| Generis Corp                       | $100,000   | Software license, maintenance, and technical support for CARA software. City Agreement 2022-0446. |
| Greyheller LLC DBA Appsian         | $35,000    | Maintenance and license to support and manage data security accessing eCAPS. City Agreement 2020-4502 (auto renew) |
| IPro Tech, LLC                     | $75,000    | Software licenses, maintenance and support for information governance, litigation readiness, and eDiscovery processes. City Agreement 2022-1559. |</p>
<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
</table>
| Oracle America              | $ 500,000 | $5,000,000 (5 Year Software License and Maintenance)  
Customer Care and Billing (Utilities CCB): $800,000. City Agreement: 2017-0371. Oracle Support Agreement: 15184722, 20416655,  
Oracle Hyperion Cloud Enterprise Performance Management (5 Year Maintenance: $800,000. City Agreement: 2017-0371-01, 2017-0371-02. Oracle Subscription Number: 9199054; CSI #18828412To include new license expansions for Oracle agreements listed above. |
| Salesforce                  | $ 350,000 | Software license for Customer Relationship Management for sales and support. City Agreement 2019-0308.                                           |
| SiteImprove                 | $ 12,000 | Software maintenance and technical support for Site improve Web Search Software Services.                                                   |
| Source Code Technology      | $ 55,000 | Software license, maintenance, and technical support for the City's K2 Business Process Management (BPM) system. City Agreement 2015-0051. |
| **Total: Software Increases** | **$ 3,140,000** |                                                                                                                                              |
## FY 25 - IT Technical Support and Maintenance Contracts

2. Execute Supplemental Agreement numbers for the following suppliers:

<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Enterprise Network Solutions (ENS)</td>
<td>$100,000</td>
<td>Execute Supplement No. 6 to City Agreement 2019-0249 for maintenance of the ServiceNow applications for a new not-to-exceed amount of $481,340.</td>
</tr>
<tr>
<td>FullStack Labs</td>
<td>$25,000</td>
<td>Execute Supplement No. 6 to City Agreement PRC000753 for 311 Mobile Application support for a new not-to-exceed amount of $173,401.</td>
</tr>
<tr>
<td>FullStack Labs</td>
<td>$120,000</td>
<td>Execute Supplement No. 5 to City Agreement 2022-0365 for Website Development Services for a new not-to-exceed amount of $890,000.</td>
</tr>
<tr>
<td>Impact Innovations Systems</td>
<td>$120,000</td>
<td>Execute Supplement No. 2 to City Agreement 2022-1006 for the CCM upgrade and enhancement services for a new not-to-exceed amount of $322,000.</td>
</tr>
<tr>
<td>Infinity Technologies</td>
<td>$150,000</td>
<td>Execute Supplement No. 2 to City Agreement 2022-0381 for the support of ongoing GIS maintenance, support and services for a new not-to-exceed amount of $350,000.</td>
</tr>
<tr>
<td>Innovyzee</td>
<td>$105,000</td>
<td>Execute Supplement No. 6 to City Agreement 2018-1576 for software licenses to monitor flow of water, sewer, and storm water for a new not-to-exceed amount of $488,440.</td>
</tr>
<tr>
<td>RCW</td>
<td>$95,300</td>
<td>Execute Supplement No. 7 for City Agreement 2015-1310 for Hyperion software maintenance support for a new not-to-exceed amount of $1,161,900.</td>
</tr>
<tr>
<td>SmartERP</td>
<td>$120,000</td>
<td>Execute Supplement No. 4 for City Agreement 2021-0218 for applications support services for a new not-to-exceed amount of $2,044,850.</td>
</tr>
<tr>
<td>Tyler Technologies</td>
<td>$335,000</td>
<td>Execute Supplement No. 4 for City Agreement 2020-0397 for electronic police citation software maintenance for a new not-to-exceed amount of $941,250.</td>
</tr>
<tr>
<td>Visionary Integration Professional (VIP)</td>
<td>$100,000</td>
<td>Execute Supplement No. 6 to City Agreement 2019-0684 for Salesforce post-production support services for a new not-to-exceed amount of $1,336,900.</td>
</tr>
<tr>
<td>Western Advance Technology (WATI)</td>
<td>$300,000</td>
<td>Execute Supplement No. 5 to City Agreement PRC000824 for custom K2 applications for a new not-to-exceed amount of $1,400,000.</td>
</tr>
<tr>
<td><strong>Total: Supplemental Agreements</strong></td>
<td><strong>$1,570,300</strong></td>
<td></td>
</tr>
</tbody>
</table>
3. Execute new contracts with the following suppliers:

<table>
<thead>
<tr>
<th>Vendor Name</th>
<th>Amount</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adlib Publishing Systems, Inc.</td>
<td>0.00</td>
<td>Execute a new agreement with Adlib Publishing Systems, Inc. for document transformation software with automatic renewal periods</td>
</tr>
<tr>
<td>County of Sacramento</td>
<td>$394,068</td>
<td>Execute a new agreement with the County of Sacramento for FY2024/25 access to the California Law Enforcement Telecommunications System for an amount not-to-exceed $394,068.</td>
</tr>
<tr>
<td>EnergyCAP</td>
<td>$180,036</td>
<td>Execute a new agreement with EnergyCAP for energy management and accounting software products and services for an amount not-to-exceed $180,036 with automatic renewal periods.</td>
</tr>
<tr>
<td>Total: New Contracts</td>
<td>$ 574,104</td>
<td></td>
</tr>
</tbody>
</table>

Grand Total                      | $ 5,284,404|
The City of Sacramento ("City") and Enterprise Networking Solutions, Inc. ("Contractor"), as parties to that certain Professional Services Agreement designated as Contract Number 2019-0249, including any and all prior supplemental contracts modifying the contract (the contract and all supplemental contracts are hereafter collectively referred to as the "Contract"), hereby supplement and modify the Contract as follows:

1. The Scope of Services specified in Exhibit A – Attachment 1A of the Contract is amended as follows:
   
   **Section 4(a):** "Time of Performance," is amended to read as follows: “The services described herein shall be provided during a term that begins on the date written on the first page of this Agreement and expires on June 30, 2026, unless extended or terminated earlier at the sole discretion of the City in accordance with the Agreement.

2. In consideration of the additional and/or revised services described in section 1, above, the maximum not-to-exceed amount that is specified in Exhibit B of the Contract for payment of Contractor’s fees and expenses, is increased by $100,000.00, and the Contract’s maximum not-to-exceed amount is amended as follows:

   Agreement’s original not-to-exceed amount: $59,640.00
   Net change by previous supplemental contracts: $321,700.00
   Not-to-exceed amount prior to this supplemental contract: $381,340.00
   **Increase** by this supplemental contract: $100,000.00
   New not-to exceed amount including all supplemental contracts: $481,340.00

3. Contractor agrees that the amount of increase or decrease in the not-to-exceed amount specified in section 2, above, shall constitute full compensation for the additional and/or revised services specified in section 1, above, and shall fully compensate Contractor for any and all direct and indirect costs that may be incurred by Contractor in connection with such additional and/or revised services, including costs associated with any changes and/or delays in schedules or in the delivery of other services by Contractor.

4. Contractor warrants and represents that the person or persons executing this supplemental contract on behalf of Contractor has or have been duly authorized by Contractor to sign this supplemental contract and bind Contractor to the terms hereof.

5. Except as specifically revised herein, all terms and conditions of the Contract shall remain in full force and effect, and Contractor shall perform all of the services, duties, obligations, and conditions required under the Contract, as supplemented and modified by this supplemental contract.

[SIGNATURES ON FOLLOWING PAGE]
Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: ____________________________
Print name: ______________________
Title: ____________________________

For: Howard Chan, City Manager

CONTRACTOR
TabordaENS

NAME OF FIRM
By: ____________________________
Print name: Jennifer Beasley
Title: VP, Professional Services
       Jun 3, 2024

By: ____________________________
Print name: ______________________
Title: ____________________________

APPROVED AS TO FORM:

Angel Solis (Jul 3, 2024 16:29 PDT)
Title: Senior Deputy City Attorney

ATTEST:

______________________________
City Clerk

Form Approved by City Attorney 2-14-2017
CONTRACT #: PRC000753-06
CONTRACT NAME: 311 Web Mobile Application
CONTRACT PROJECT #: A07000710
DEPARTMENT: Information Technology Department
DIVISION: City of Sacramento 311

PROFESSIONAL SERVICES

CONTRACT AMENDMENT

The City of Sacramento ("City") and FullStack Labs, Inc. ("Contractor"), as parties to that certain Contract awarded for the above Event and designated as City Contract Number PRC000753, including any prior Contract Amendments modifying the Contract (the Contract and Contract Amendments are hereafter collectively referred to as the "Contract"), hereby amend and modify the Contract as follows:

1  SCOPE
The Services specified in the Scope of Services Exhibit of the Contract are not changed.

2  TIME OF PERFORMANCE - EXTENSION
The Time of Performance as described in the Contract shall be provided and extended until the Agreement expired December 31, 2026, unless the Agreement is terminated earlier or extended in accordance with the provisions of the Agreement.

3  CONTRACT AMOUNT
In consideration of the Contract Amendment(s) described above, the maximum not-to-exceed amount that is specified in the Contract is INCREASED by $25,000, and the Contract’s maximum not-to-exceed amount is amended as follows:

The original Contract sum was: $8,401.00
The net change by previous Contract Amendment was: $140,000.00
The Contract sum prior to this Contract Amendment was: $148,401.00
The Contract sum will be INCREASED by this Contract Amendment: $25,000.00
The new Contract sum including all Contrac: Amendments: $173,401.00

4 FULL COMPENSATION
Contractor agrees that the amount of increase or decrease in the not-to-exceed amount specified in section, above, shall constitute full compensation for the additional and/or revised Services specified in section, above, and shall fully compensate Contractor for any and all direct and indirect costs that may be incurred by Contractor in connection with such additional and/or revised Services, including costs associated with any changes and/or delays in work schedules or in the performance of other Services or work by Contractor.

5 AUTHORIZED SIGNATURE
Contractor warrants and represents that the person or persons executing this amendment on behalf of Contractor has or have been duly authorized by the Contractor to sign this amendment and bind Contractor to the terms hereof.

6 FULL FORCE AND EFFECT
Except as specifically revised herein, all terms and conditions of the Contract shall remain in full force and effect, and Contractor shall perform all of the services, duties, obligations, and conditions required under the Contract, as supplemented and modified by this amendment to the original agreement.
SIGNATURES

The parties have signed this Contract, effective as of the day and year first stated above.

CONTRACTOR

Under penalty of perjury, I certify that the information provided here is correct.

Signature: Ben Carle  
Ben Carle (Jun 5, 2024 15:00 EDT)

Title: CEO

Additional Signature (if required):

Title:

CITY OF SACRAMENTO

A Municipal Corporation

APPROVED AS TO FORM:

Signature:

Title:

Reviewed By:

Signature:

Title:

Approved By:

Signature:

Title:

Additional Signature (if required):

Title:
Contract Routing Sheet

Payment / Performance Bond Only

General Routing Information

Department: Information Technology
Contract Coordinator: Cassy Vaioleti  Email: CVaioleti@cityofsacramento.org
Effective Date:  Expiration Date:
Grant/Project Name: Website & Development services
Other Party: Full Stack, LLC
Original Not to Exceed Amount: $218,400
Assessor’s Parcel Number(s):

Project Number:  Bid/RFQ/RFP/SSJ #: P22071011005

☐ New Contract  ☑ Supplements  ☐ Addendums  ☐ Change Orders
Adjusted Amount of this Change (+/-): $120,000  New Not to Exceed Amount: $890,000
Change In Scope: Additional services
Original Contract Number: 2022-0356  Supplement Number: 05

Council Approval

Original Meeting Date: 06/28/2022  Council File ID: 2022-0186
Supplement Meeting Date: 06/18/2024  Council File ID: 2024-01099

Processing Information

☐ Clerk’s Office to Record  ☐ Return to Dept for Recording  ☐ Additional Originals Attached – Return to Dept
☐ Real Estate  ☐ Construction Related  ☐ Return to Dept for Other Party Signature

List any other processing notes/special instructions, including any other contract number or council file ID numbers related to this agreement:

Department Review and Routing

Department Directors less than $100K; $100K and higher must have Assistant City Manager or City Manager authorization.

<table>
<thead>
<tr>
<th>Sign</th>
<th>Sign</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sign</td>
<td>Sign</td>
</tr>
<tr>
<td>Sign</td>
<td>Sign</td>
</tr>
</tbody>
</table>

Cassie Vaioleti
Ignacio Estevez (May 31, 2024 00:14 PDT)
SUPPLEMENTAL CONTRACT

The City of Sacramento ("City") and Full Stack, LLC. ("Contractor"), as parties to that certain Professional Services Agreement designated as Contract Number 2022-0356, including any and all prior supplemental contracts modifying the contract (the contract and all supplemental contracts are hereafter collectively referred to as the "Contract"), hereby supplement and modify the Contract as follows:

1. The Scope of Services specified in Exhibit A – Attachment 1A of the Contract is amended as follows:

   The terms of the Agreement shall begin on the date identified on the first page of this Agreement and expire on December 31, 2025, unless terminated earlier or otherwise extended in accordance with the provisions of the Agreement. CONTRACTOR shall perform the Services under this Agreement during the term of the Agreement.

2. In consideration of the additional and/or revised services described in section 1, above, the maximum not-to-exceed amount that is specified in Exhibit B of the Contract for payment of Contractor’s fees and expenses, is increased by $120,000.00, and the Contract’s maximum not-to-exceed amount is amended as follows:

   Agreement’s original not-to-exceed amount: $ 218,400
   Net change by previous supplemental contracts: 551,600
   Not-to-exceed amount prior to this supplemental contract: 770,000
   Increased by this supplemental contract: 120,000
   New not-to-exceed amount including all supplemental contracts: $ 890,000

3. Contractor agrees that the amount of increase or decrease in the not-to-exceed amount specified in section 2, above, shall constitute full compensation for the additional and/or revised services specified in section 1, above, and shall fully compensate Contractor for any and all direct and indirect costs that may be incurred by Contractor in connection with such additional and/or revised services, including costs associated with any changes and/or delays in schedules or in the delivery of other services by Contractor.

4. Contractor warrants and represents that the person or persons executing this supplemental contract on behalf of Contractor has or have been duly authorized by Contractor to sign this supplemental contract and bind Contractor to the terms hereof.

5. Except as specifically revised herein, all terms and conditions of the Contract shall remain in full force and effect, and Contractor shall perform all of the services, duties, obligations, and conditions required under the Contract, as supplemented and modified by this supplemental contract.

[SIGNATURES ON FOLLOWING PAGE]
CITY OF SACRAMENTO
A Municipal Corporation

By:________________________________________
Print name:________________________________
Title:_____________________________________

By:________________________________________
Print name:________________________________
Title:_____________________________________

For: Howard Chan, City Manager

CONTRACTOR
FullStack

NAME OF FIRM
Ben Carle

Print name: Ben Carle
Title: CEO

By: Ben Carle (Jul 5, 2014 12:01 EDT)

APPROVED AS TO FORM:

Title:_____________________________________

ATTEST:

__________________________________________
City Clerk

Form Approved by City Attorney 2-14-2017
SUPPLEMENTAL CONTRACT
CHANGE IN SCOPE AND INCREASE IN NOT-TO-EXCEED AMOUNT

Project Title and Job Number: Document Management System Maintenance & Support
Date: _____

Purchase Order #: Supplemental Contract No.: 02

The City of Sacramento ("City") and Impact Innovations ("Contractor"), as parties to that certain Professional Service Agreement designated as Contract Number 2022-1006, including any and all prior supplemental contracts modifying the contract (the contract and all supplemental contracts are hereafter collectively referred to as the "Contract"), hereby supplement and modify the Contract as follows:

1. The Scope set forth in “Time of Performance” of the Contract is amended as follows: The terms of the Agreement shall begin on the date identified on the first page of this Agreement and expire on December 31, 2025, unless terminated earlier or otherwise extended in accordance with the provisions of the Agreement. CONTRACTOR shall perform the Services under this Agreement during the term of the Agreement.

2. The maximum not-to-exceed amount that is specified in Exhibit B of the Contract for payment of Contractor's fees and expenses, is Increased by $120,000, and the Contract’s maximum not-to-exceed amount is amended as follows:

   Agreement's original not-to-exceed amount: $82,000
   Net change by previous supplemental contracts: $120,000
   Not-to-exceed amount prior to this supplemental contract: $202,000
   Increased by this supplemental contract: $120,000
   New not-to-exceed amount including all supplemental contracts: $322,000

3. Contractor agrees that the amount specified in section 2 above, shall fully compensate Contractor under the Contract, as supplemented and modified by this supplement.

4. Contractor warrants and represents that the person or persons executing this supplemental contract on behalf of Contractor is duly authorized by Contractor to sign this supplemental contract and bind Contractor to the terms hereof.

5. Except as specifically revised herein, all terms and conditions of the Contract shall remain in full force and effect, and Contractor shall perform as required under the Contract, as supplemented and modified by this supplement.

Rev. 10/12/2023
CITY OF SACRAMENTO
A Municipal Corporation

By: ________________________________
Print name: ________________________
Title: ______________________________

By: ________________________________
Print name: ________________________
Title: ______________________________

For: Howard Chan, City Manager

CONTRACTOR
Impact Innovations Systems, Inc.

NAME OF FIRM

By: ________________________________
Print name: Jae Lim
Title: Principal

By: ________________________________
Print name: Jae Lim
Title: Principal

APPROVED AS TO FORM:

______________________________
Title: Senior Deputy City Attorney

ATTEST:

______________________________
City Clerk
SUPPLEMENTAL AGREEMENT

The City of Sacramento ("CITY") and Infinity Technologies ("CONTRACTOR"), as parties to that certain Professional Services Agreement designated as Agreement Number 2022-0381, including any and all prior supplemental agreements modifying the agreement (the agreement and supplemental agreements are hereafter collectively referred to as the "Agreement"), hereby supplement and modify the Agreement as follows:

1. The “Time of Performance” of the Agreement in Attachment 1A is amended to read as follows:
   The services provided by CONTRACTOR pursuant to this Agreement and the Agreement’s term shall start on the date identified on the first page of this Agreement and be completed on or before December 31, 2025, unless terminated earlier or otherwise in accordance with the provisions of this Agreement.

2. In consideration of the additional services described in section 2, above, the maximum not-to-exceed amount that is specified in Exhibit B of the Agreement for payment of CONTRACTOR's fees and expenses, is increased by $150,000.00, and the Agreement’s maximum not-to-exceed amount is amended as follows:

   Agreement's original not-to-exceed amount: $50,000.00
   Net change by previous supplemental agreements: $150,000.00
   Not-to-exceed amount prior to this supplemental agreement: $200,000.00
   Increased by this supplemental agreement: $150,000.00
   New not-to-exceed amount including all supplemental agreements: $350,000.00

3. CONTRACTOR agrees that the amount of increase in the not-to-exceed amount specified in section 2, above, shall constitute full compensation for the additional time specified in section 1, above, and shall fully compensate CONTRACTOR for any and all direct and indirect costs that may be incurred by CONTRACTOR in connection with such additional time, including costs associated with any changes and/or delays in work schedules or in the performance of other services or work by CONTRACTOR.

4. CONTRACTOR warrants and represents that the person or persons executing this supplemental agreement on behalf of CONTRACTOR has or have been duly authorized by CONTRACTOR to sign this supplemental agreement and bind CONTRACTOR to the terms hereof.

5. Except as specifically revised herein, all terms and conditions of the Agreement shall remain in full force and effect, and CONTRACTOR shall perform all of the services, duties, obligations, and conditions required under the Agreement, as supplemented and modified by this supplemental agreement.

Approval Recommended By:

GIS Specialist III
Project Manager

Approved As To Form By:

GIS Manager

Senior Deputy City Attorney

Page 1 of 2
SUPPLEMENTAL AGREEMENT

Approved By:  
CEO  

CONTRACTOR

Approved By:  

City of Sacramento

Attested To By:  

City Clerk
SUPPLEMENTAL CONTRACT

Project Title and Job Number: InfoMaster Software Maintenance
Purchase Order #: Quote # 180149981

Date: 
Supplemental Contract No.: 

The City of Sacramento ("City") and Autodesk/Innoovyz, LLC ("Contractor"), as parties to that certain Goods and Non-
Professional Services Agreement designated as Contract Number 2018-1576, including any and all prior supplemental
contracts modifying the contract (the contract and all supplemental contracts are hereafter collectively referred to as the
"Contract"), hereby supplement and modify the Contract as follows:

1. The Technical Specifications specified in Quote # 180149981 of the Contract is amended as follows:

   Term for maintenance and licensing is extended for FY2024-25.

2. In consideration of the additional and/or revised goods and services described in section 1, above, the maximum not-to-
   exceed amount that is specified in the Contract for payment of Contractor’s fees and expenses, is increased by
   $105,000.00, and the Contract’s maximum not-to-exceed amount is amended as follows:

   Agreement’s original not-to-exceed amount: $ 73,440.00.
   Net change by previous supplemental contracts: 310,000.00
   Not-to-exceed amount prior to this supplemental contract: 383,400.00
   Increase by this supplemental contract: 105,000.00
   New not-to-exceed amount including all supplemental contracts: $ 488,440.00

3. Contractor agrees that the amount of increase or decrease in the not-to-exceed amount specified in section 2, above,
   shall constitute full compensation for the additional and/or revised goods and services specified in section 1, above, and
   shall fully compensate Contractor for any and all direct and indirect costs that may be incurred by Contractor in
   connection with such additional and/or revised goods and services, including costs associated with any changes and/or
delays in schedules or in the delivery of other goods and services by Contractor.

4. Contractor warrants and represents that the person or persons executing this supplemental contract on behalf of
   Contractor has or have been duly authorized by Contractor to sign this supplemental contract and bind Contractor to the
   terms hereof.

5. Except as specifically revised herein, all terms and conditions of the Contract shall remain in full force and effect, and
   Contractor shall provide all of the goods and perform all of the services, duties, obligations, and conditions required
   under the Contract, as supplemented and modified by this supplemental contract.

   [SIGNATURES ON FOLLOWING PAGE]
Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: __________________________
Print name: __________________
Title: ________________________

By: __________________________
Print name: __________________
Title: ________________________

For: Howard Chan, City Manager

CONTRACTOR

NAME OF FIRM

By: __________________________
Print name: __________________
Title: ________________________

APPROVED AS TO FORM:

Title:

ATTEST:

____________________________

City Clerk

Form Approved by City Attorney 2-14-2017
The City of Sacramento ("City") and RCW Services, Inc. ("Contractor"), as parties to that certain Professional Services Agreement designated as Contract Number 2015-1310, including any and all prior supplemental contracts modifying the contract (the contract and all supplemental contracts are hereafter collectively referred to as the "Contract"), hereby supplement and modify the Contract as follows:

1. The Scope of Services specified in Exhibit A of the Contract is amended as follows:

   Additional Services:
   - Develop, configure, and integrate the following for Midyear 2025 and Budget Development FY2025/26 in the Hyperion Cloud application.
   - Create additional reports for presentation, reconciliation, and validation.
   - Streamline the BCP functionality.
   - Redesign the Offset process for Budget Development.

   Contractor shall provide the services described in this Agreement for an additional consecutive term (the tenth (10th)). The 10th consecutive term shall expire on December 31, 2025.

2. In consideration of the additional and/or revised services described in section 1, above, the maximum not-to-exceed amount that is specified in Exhibit B of the Contract for payment of Contractor’s fees and expenses, is increased by $95,300, and the Contract’s maximum not-to-exceed amount is amended as follows:

   Agreement’s original not-to-exceed amount: $200,000
   Net change by previous supplemental contracts: $941,600
   Not-to-exceed amount prior to this supplemental contract: $1,066,600
   Increase by this supplemental contract: $95,300
   New not-to exceed amount including all supplemental contracts: $1,161,900

3. Contractor agrees that the amount of increase or decrease in the not-to-exceed amount specified in section 2, above, shall constitute full compensation for the additional and/or revised services specified in section 1, above, and shall fully compensate Contractor for any and all direct and indirect costs that may be incurred by Contractor in connection with such additional and/or revised services, including costs associated with any changes and/or delays in schedules or in the delivery of other services by Contractor.

4. Contractor warrants and represents that the person or persons executing this supplemental contract on behalf of Contractor has or have been duly authorized by Contractor to sign this supplemental contract and bind Contractor to the terms hereof.

5. Except as specifically revised herein, all terms and conditions of the Contract shall remain in full force and effect, and Contractor shall perform all of the services, duties, obligations, and conditions required under the Contract, as supplemented and modified by this supplemental contract.

[SIGNATURES ON FOLLOWING PAGE]
CITY OF SACRAMENTO  
A Municipal Corporation

By: ____________________________

Print name: ____________________________

Title: ____________________________

CONTRACTOR
RCW Services, Inc

NAME OF FIRM

By: Richard C Welborn (Jun 5, 2024 10:39 PDT)
Print name: Richard C Welborn
Title: President

For: Howard Chan, City Manager

APPROVED AS TO FORM:

Angel Solis  (Jun 5, 2024 10:39 PDT)
Title: Senior Deputy City Attorney

ATTEST:

______________________________
City Clerk

Form Approved by City Attorney 2-14-2017
SUPPLEMENTAL CONTRACT

Project Title and Job Number: ERP Staffing Resources
Purchase Order #: Supplemental Contract No.: 04

The City of Sacramento ("City") and Smart ERP ("Contractor"), as parties to that certain Professional Services Agreement designated as Contract Number 2021-0218, including any and all prior supplemental contracts modifying the contract (the contract and all supplemental contracts are hereafter collectively referred to as the "Contract"), hereby supplement and modify the Contract as follows:

1. The Scope of Services specified in Exhibit A – Attachment 1A of the Contract is amended as follows:

   Section 5: “Time of Performance,” is amended to read as follows: “The services described herein shall be provided during a term that begins on the date written on the first page of this Agreement and expires on December 31, 2025, unless extended or terminated earlier at the sole discretion of the City in accordance with the Agreement.

2. In consideration of the additional and/or revised services described in section 1, above, the maximum not-to-exceed amount that is specified in Exhibit B of the Contract for payment of Contractor’s fees and expenses, is increased by $120,000, and the Contract’s maximum not-to-exceed amount is amended as follows:

   Agreement’s original not-to-exceed amount: $244,950
   Net change by previous supplemental contracts: $1,679,900
   Not-to-exceed amount prior to this supplemental contract: $1,924,850
   Increase by this supplemental contract: $120,000
   New not-to-exceed amount including all supplemental contracts: $2,044,850

3. Contractor agrees that the amount of increase or decrease in the not-to-exceed amount specified in section 2, above, shall constitute full compensation for the additional and/or revised services specified in section 1, above, and shall fully compensate Contractor for any and all direct and indirect costs that may be incurred by Contractor in connection with such additional and/or revised services, including costs associated with any changes and/or delays in schedules or in the delivery of other services by Contractor.

4. Contractor warrants and represents that the person or persons executing this supplemental contract on behalf of Contractor has or have been duly authorized by Contractor to sign this supplemental contract and bind Contractor to the terms hereof.

5. Except as specifically revised herein, all terms and conditions of the Contract shall remain in full force and effect, and Contractor shall perform all of the services, duties, obligations, and conditions required under the Contract, as supplemented and modified by this supplemental contract.

[SIGNATURES ON FOLLOWING PAGE]
Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: 
Print name: Mrudul Sadanandan
Title: Assistant Director

CONTRACTOR

Smart ERP Solutions, Inc.

NAME OF FIRM

By: Candice Carden (Jun 1, 2024 00:19 EDT)
Print name: Candice Carden
Title: Director Client Success

For: Howard Chan, City Manager

APPROVED AS TO FORM:

Angel Solis (Jun 2, 2024 12:07 PDT)
Title: Senior Deputy City Attorney

ATTEST:

___________________________________
City Clerk
The City of Sacramento ("City") and Tyler Technologies, Inc. ("Contractor"), as parties to that certain Maintenance and Support Services Agreement designated as Contract Number 2020-0397, including any and all prior supplemental contracts modifying the contract (the contract and all supplemental contracts are hereafter collectively referred to as the "Contract"), hereby supplement and modify the Contract as follows:

1. Schedule 1 of the Contract is amended as follows:

   Year 6: 08/31/2024-08/30/2025 (FY25) $110,000
   Year 7: 08/31/2025-08/30/2026 (FY26) $110,000
   Year 8: 08/31/2026-08/30/2027 (FY27) $115,000

2. Term 8.1 of the Contract is amended as follows:

   **Term.** This M&S Agreement shall commence in accordance with Schedule 1 of this M&S Agreement (the "Effective Date") and shall continue in effect for (5) five (8) periods of one (1) year each; provided, however, that at the end of such initial term, and on each subsequent anniversary of the Effective Date, the term may renew for additional one (1) year terms upon mutual agreement of the Parties unless a Party provides at least thirty (30) calendar days prior to the end of the then current term, written notice that it does not wish to extend the term or otherwise terminates the agreement as provided in this Section 8. Purchaser may indicate its agreement to renew by timely payment of a renewal invoice issued by Tyler.

3. In consideration of the additional and/or revised services described in sections 1 and 2, above, the maximum not-to-exceed amount of the Contract for payment of Contractor's fees and expenses, is increased by $335,000.00, and the Contract’s maximum not-to-exceed amount is amended as follows:

   Agreement's original not-to-exceed amount: $81,250
   Net change by previous supplemental contracts: 525,000
   Not-to-exceed amount prior to this supplemental contract: 606,250
   **Increase** by this supplemental contract: 335,000
   New not-to-exceed amount including all supplemental contracts: $941,250

4. Contractor agrees that the amount of increase or decrease in the not-to-exceed amount specified in section 3. above shall constitute full compensation for the additional and/or revised services specified in sections 1 and 2, above, and shall fully compensate Contractor for any and all direct and indirect costs that may be incurred by Contractor in connection with such additional and/or revised services, including costs associated with any changes and/or delays in schedules or in the delivery of other services by Contractor.

5. Contractor warrants and represents that the person or persons executing this supplemental contract on behalf of Contractor has or have been duly authorized by Contractor to sign this supplemental contract and bind Contractor to the terms hereof.

6. Except as specifically revised herein, all terms and conditions of the Contract shall remain in full force and effect, and Contractor shall perform all of the services, duties, obligations, and conditions required under the Contract, as supplemented and modified by this supplemental contract.

[SIGNATURES ON FOLLOWING PAGE]
Executed as of the day and year first above stated.

CITY OF SACRAMENTO  
A Municipal Corporation

By: __________________________
Print name: __________________________
Title: __________________________

By: __________________________
Print name: __________________________
Title: __________________________

For: Howard Chan, City Manager

CONTRACTOR

Tyler Technologies

NAME OF FIRM

By: Sherry Clark
Print name: Sherry Clark
Title: Group General Counsel

APPROVED AS TO FORM:

[Signature]
Title: Senior Deputy City Attorney

ATTEST:

_______________________________
City Clerk

Form Approved by City Attorney 2-14-2017
SUPPLEMENTAL CONTRACT

Project Title and Job Number: Sales Force 311-Technical Service
Purchase Order #: ____________________________ Supplemental Contract No.: 06

Date: ____________________________

The City of Sacramento ("City") and Visionary Integration Professional (VIP) ("Contractor"), as parties to that certain Professional Services Agreement designated as Contract Number 2019-0684, including any and all prior supplemental contracts modifying the contract (the contract and all supplemental contracts are hereafter collectively referred to as the "Contract"), hereby supplement and modify the Contract as follows:

1. The Scope of Services specified in Exhibit A – Attachment 1A of the Contract is amended as follows:

Section 5: "Time of Performance," is amended to read as follows: "The services described herein shall be provided during a term that begins on the date written on the first page of this Agreement and expires on December 31, 2025, unless extended or terminated earlier at the sole discretion of the City in accordance with the Agreement.

2. In consideration of the additional and/or revised services described in section 1, above, the maximum not-to-exceed amount that is specified in Exhibit B of the Contract for payment of Contractor’s fees and expenses, is increased by $100,000.00, and the Contract’s maximum not-to-exceed amount is amended as follows:

   Agreement’s original not-to-exceed amount: $479,000
   Net change by previous supplemental contracts: $857,900
   Not-to-exceed amount prior to this supplemental contract: $1,336,900
   Increase by this supplemental contract: $100,000
   New not-to exceed amount including all supplemental contracts: $1,436,900

3. Contractor agrees that the amount of increase or decrease in the not-to-exceed amount specified in section 2, above, shall constitute full compensation for the additional and/or revised services specified in section 1, above, and shall fully compensate Contractor for any and all direct and indirect costs that may be incurred by Contractor in connection with such additional and/or revised services, including costs associated with any changes and/or delays in schedules or in the delivery of other services by Contractor.

4. Contractor warrants and represents that the person or persons executing this supplemental contract on behalf of Contractor has or have been duly authorized by Contractor to sign this supplemental contract and bind Contractor to the terms hereof.

5. Except as specifically revised herein, all terms and conditions of the Contract shall remain in full force and effect, and Contractor shall perform all of the services, duties, obligations, and conditions required under the Contract, as supplemented and modified by this supplemental contract.

[SIGNATURES ON FOLLOWING PAGE]

(Rev. 11 1 19)
Executed as of the day and year first above stated.

CITY OF SACRAMENTO
A Municipal Corporation

By: ________________________________
Print name: __________________________
Title: _______________________________

CONTRACTOR
Visionary Integration Professionals LLC

NAME OF FIRM
By: ________________________________
Print name: Patti Bennion
Title: Chief Financial Officer

By: ________________________________
Print name: __________________________
Title: _______________________________

For: Howard Chan, City Manager

APPROVED AS TO FORM:

Angel Solis (Jun 3, 2024 13:06 PDT)
Title: Senior Deputy City Attorney

ATTEST:

_______________________________
City Clerk

Form Approved by City Attorney 2-14-2017
CONTRACT #: PRC000824-05

CONTRACT NAME: K2 SERVICES
CONTRACT PROJECT #: 07000-1001-07001041
DEPARTMENT: INFORMATION TECHNOLOGY
DIVISION: ENTERPRISE APPLICATIONS

PROFESSIONAL SERVICES

CONTRACT AMENDMENT

The City of Sacramento ("City") and West Advanced Technologies ("Contractor"), as parties to that certain Contract awarded for the above Event and designated as City Contract Number PRC000824, including any prior Contract Amendments modifying the Contract (the Contract and Contract Amendments are hereafter collectively referred to as the "Contract"), hereby amend and modify the Contract as follows:

TIME OF PERFORMANCE - EXTENSION

The Time of Performance as described in the Contract shall be extended to December 31, 2025, to provide additional time for completion of the Contract.

CONTRACT AMOUNT

In consideration of the Contract Amendment(s) described above, the maximum not-to-exceed amount that is specified in the Contract is INCREASED by $300,000, and the Contract's maximum not-to-exceed amount is amended as follows:

The original Contract sum was: $70,000.
The net change by previous Contract Amendment was: $1,030,000.
The Contract sum prior to this Contract Amendment was: $1,100,000.
The Contract sum will be INCREASED by this Contract Amendment: $300,000
The new Contract sum including all Contract Amendments: $1,400,000
FULL COMPENSATION
Contractor agrees that the amount of increase or decrease in the not-to-exceed amount specified in section, above, shall constitute full compensation for the additional and/or revised Services specified in section, above, and shall fully compensate Contractor for any and all direct and indirect costs that may be incurred by Contractor in connection with such additional and/or revised Services, including costs associated with any changes and/or delays in work schedules or in the performance of other Services or work by Contractor.

AUTHORIZED SIGNATURE
Contractor warrants and represents that the person or persons executing this amendment on behalf of Contractor has or have been duly authorized by the Contractor to sign this amendment and bind Contractor to the terms hereof.

FULL FORCE AND EFFECT
Except as specifically revised herein, all terms and conditions of the Contract shall remain in full force and effect, and Contractor shall perform all of the services, duties, obligations, and conditions required under the Contract, as supplemented and modified by this amendment to the original agreement.
SIGNATURES

The parties have signed this Contract, effective as of the day and year first stated above.

CONTRACTOR

Under penalty of perjury, I certify that the information provided here is correct.

Signature: [Signature]

Title: Head - Consulting

Additional Signature (if required):

Title:

CITY OF SACRAMENTO

A Municipal Corporation

APPROVED AS TO FORM:

Signature: [Signature]

Title: Senior Deputy City Attorney

Reviewed By:

Signature:

Title:

Approved By:

Signature:

Title:

Additional Signature (if required):

Title:
ADLIB TERMS AND CONDITIONS

These Adlib Terms and Conditions of Subscription ("T&Cs") are applicable to any Order Form for Subscription Licenses and related services issued or provided by Adlib Publishing Systems, Inc. (hereinafter "Adlib") and accepted by the City of Sacramento, a municipal corporation of the state of California, ("Customer" or "City"). These T&Cs, along with all Order Forms and/or SOWs, collectively constitute the "Agreement" by and between Adlib and Customer. Capitalized terms have the meanings ascribed to them throughout the Agreement.

SECTION 1. DEFINITIONS

"Additional Fees" means the fees, as set out in the applicable Order Form, payable by Customer for Additional Services.

"Additional Services" means the services, as set out in the applicable Order Form or SOW, not included with the Subscription License, including without limitation Support.

"Affiliate" means an entity or person that directly or indirectly, through one or more intermediaries, controls, is controlled by or in common control with a party to this Agreement. For purposes of this definition, control means direct or indirect ownership or control of 50% of the voting interest of the subject entity.

"Agreement" has the meaning set forth in the preamble, together with any schedules, exhibits and other appendices attached hereto or incorporated herein by reference, and as may be amended from time to time in accordance with its terms.

"Change Order" has the meaning set out in Section 8.5(b).

"Confidential Information" has the meaning set out in Section 9.1.

"Cold DR" means cold disaster recovery.

"Content" means all text, files, images, graphics, illustrations, information, data and other content and material, in any format, used in connection with the Software or Additional Services or provided by Customer or its Users that reside in, or run on or through, the Services Environment.

"Customer" means the City of Sacramento, a municipal corporation of the state of California.

"Customer Data" means user identification, and any data collected or generated through Users of the Subscription License, Additional Services or Professional Services.

"Customer Network" means computers in the possession or control of Customer which are accessible only through a private local or wide area network which can only be used or accessed by Customer's employees.

"Customer Responsibilities" has the meaning set out in Section 8.4(a).

"Deliverables" means work product, technical architectures, software, source code, object code, specifications, documentation, and other work product and materials which are originated and prepared for Customer and delivered by Adlib (either independently or in concert with Customer or third parties) in the course of Adlib's performance under a SOW, in any form or medium, and includes any Modifications, and all Intellectual Property Rights therein.

"Disaster" means an unplanned interruption in Customer's data processing services where the Software is installed as the primary data processing site.

"DPA" means Adlib's Data Processing Agreement, available upon request.

"Document" means a single incoming file submitted and processed through the Adlib platform.

"Effective Date" means the date set forth on the initial Order Form on or after the date the T&Cs are executed by both Parties.

"Engine" means any Instance of the object code that is loaded into memory and connected to a licensed implementation of the Adlib platform through workflows and for which one or more instructions have been executed (whether or not instructions continue to execute).
“Hot DR” means hot disaster recovery.

“Instance” means, with respect to the Adlib platform, an instance of Software that is loaded into memory on a Server (physical or virtual) and for which one or more instructions have been executed (whether or not instructions continue to execute); or, with respect to the Adlib platform, a single execution of a specific type of Engine regardless of where, or how, the Software is run. For illustration, running 3 OCR Engines in parallel would be 3 instances and would require 3 Software licenses, or in the case of the Conversion App which includes multiple Engines, you are able to run 1 instance of each of the Engines concurrently. If you require more than 1 instance of any single engine concurrently, then additional license(s) are required.

“Intellectual Property Rights” means all world-wide intellectual and industrial property rights, including without limitation, all rights in each country to copyrights, trademarks, service marks, patents, inventions, industrial designs, trade secrets, trade dress and all other proprietary rights, including all applications and registrations related thereto.

“Licensing Metrics” means the maximum quantities or units, or any other applicable metrics, relating to the Software for which rights are granted hereunder as set forth in an Order Form.

“Modifications” means any modifications, enhancements or additions to the Software or its documentation, including without limitation, modifications described in a SOW as part of any Deliverable(s).

“Non-Adlib Application” means a Web-based, mobile, offline or other software application functionality that interoperates with the Software, that is provided by Customer or a third party. Non-Adlib Applications, other than those obtained or provided by Customer, will be identifiable as such.

“Operational Data” means any analytical or operational data derived from Adlib’s customers’ use of the Software, Additional Services or Professional Services that has been anonymized and de-identified by Adlib. Examples of Operational Data include the number of pages and documents produced by Adlib’s customers, types of documents processed and job processing load patterns.

“Order Form” means the Adlib approved ordering document by which Customer agrees to subscribe to the Subscription License and purchase Additional Services and/or Professional Services, containing applicable details, including the scope of the Subscription License, the Subscription Term, related services selected, Customer contact information and applicable fees.

“Parties” means Adlib and Customer together, and “Party” means each of Adlib and Customer separately.

“Person” means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, or other entity or a government or any agency, department or instrumentality thereof.

“Personal Data” means any information relating to an identified or identifiable individual where such information is contained in Customer Data and is protected similarly as personal data or personally identifiable information under applicable Data Protection Laws, as defined in the DPA.

“Production Use” means any use of the Software in a production environment, for revenue generation, for a commercial activity or for any other productive business purpose.

“Professional Services” has the meaning set forth in Section 8.1. and for greater certainty is not included in Additional Services.

“Renewal Term” has the meaning set forth in Section 14.1.

“Sensitive Information” means credit or debit card numbers; financial account numbers or wire instructions, government issued identification numbers (such as Social Security numbers, passport numbers), biometric information, personal health information (or other information protected under any applicable health data protection laws), personal information of children protected under any child data protection laws, and any other information or combinations of information that falls within the definition of “special categories of data” under GDPR or any other applicable law relating to privacy and data protection.

“Separate Terms” means separate license terms between Customer and a third-party licensor that apply to Separately Licensed Third-Party Technology.

“Separately Licensed Third-Party Technology” means a third-party technology that is licensed under Separate Terms and not under the terms of this Agreement.
“Server” means, with respect to the Adlib platform, the number of CPUs used to operate or execute the Software, provided that: (i) all CPUs on a computer, computer cluster, environment, or machine that is used by a virtualized environment, virtual machine, container or similar virtualization or hardware abstraction technology on which the Software is installed, are deemed to operate or execute the Software unless Customer ensures that such computer, computer cluster, environment or machine is limited at all times to the number of CPUs actually used to operate or execute the Software, using reliable and verifiable means to do so; and (ii) if a CPU contains more than one processing core, each group of two processing cores, and remaining unpaired processing cores will be deemed to constitute one Server. For illustration, three cores would be counted as two Servers and nine cores could be counted as five Servers.

“Services Environment” means the combination of hardware and software components owned, licensed or managed by Adlib to which Adlib grants Customer and its Users access as part of the Software licenses granted hereunder and Additional Services.

“Software” means the software product or products, in object form only, set forth in an Order Form, including all related electronic documentation (printed or electronic), media (including all templates, audiovisual materials, and applets), activation keys or identifications, other materials which accompany the Software, any Modifications and all Updates.

“SOW” has the meaning set out in Section 8.1.

“Subscription License” means licensed Software on a subscription basis model, and includes the services, as set out in the applicable Order Form, consisting of volume-based document packages; the applicable platform, based on the selected document-package solution; connectors; and Support, as applicable.

“Subscription License Fee” means fee payable by Customer for a Subscription License, as set out in the applicable Order Form.

“Subscription Term” has the meaning set forth in Section 14.1.

“Support” means Adlib’s support services in respect of the on-premises Software as further set forth in Adlib’s Support Policy.


“Third Party Products” means any third-party equipment, products, software or services required in order to use the Software or certain functions of the Software, as detailed in the documentation accompanying the Software. For greater certainty, Third Party Product does not include any third-party intellectual property rights embedded in the Software.

“Updates” means any patches, revisions, updates to be used with or in conjunction with the version of the Software licensed (as specified in the applicable Order Form) that are or may be subsequently delivered or otherwise made available by Adlib to Customer through Adlib’s Support Policy.

“User” means any individual who uses the Software or Additional Services on Customer’s behalf or through Customer’s account or passwords, whether authorized or not. The term “Users” include any employees, representatives, consultants, contractors, and end users, as applicable, authorized by Customer to use the Software and Additional Services on its behalf in accordance with this Agreement.

SECTION 2. LICENSE RIGHTS; RESTRICTIONS; ADDITIONAL SERVICES

2.1 License Rights

(a) Subscription License. Subject to the terms and conditions of the Agreement and in consideration for the payment of the Subscription License Fee, Adlib hereby grants Customer a limited, non-exclusive, non-assignable, non-transferable, non-sublicensable right to install and use the Software, for the Subscription Term or the then-current Renewal Term, for use on the Customer Network only for its internal business use. Customer’s rights to use the Software will be limited by the Licensing Metrics specified in each applicable Order Form. The foregoing license grant does not permit any use of the Software after the expiration or termination of the Subscription Term. For clarity, the foregoing license grant includes provision of all Updates during a Subscription Term.
(b) **Additional Licenses.** Adlib and Customer may agree to additional Software licenses by preparing and executing additional Order Forms. Each additional Order Form, when duly issued, will constitute a separate agreement between Adlib and Customer to use the Software listed in such Order Form pursuant to the terms and conditions herein and the Order Form.

(c) **Trial Use and Pilot Services.** Adlib may make available certain Software for trial, non-production purposes. Services acquired for trial purposes are provided on an “as is” and “as available” basis and may not be used with production data that has not been masked, anonymized or otherwise rendered unreadable. Furthermore, Adlib does not provide technical or other support or offer any warranties for such Services.

2.2 **Restrictions.**

(a) **Use Restrictions.** Customer may not, and may not permit, cause or encourage others to:

1. use or make the Software or Deliverables or their respective functionality available outside of the Customer Network;

2. copy the Software or Deliverables except as required to exercise the rights granted to Customer hereunder;

3. distribute, disclose, sublicense, assign, transfer, sell, give away, loan, lend, rent, lease, disclose or transmit to any third party the Software or Deliverables or the use thereof, whether on a membership, subscription, or other basis, whether temporarily or permanently;

4. modify, port, adapt, translate, reverse engineer, decompile, disassemble or convert into human readable form the Software or Deliverables, or create Modifications or derivative works based on, or any competitive or emulating software using, the Software or Deliverables;

5. provide the use or benefit of the Software or Deliverables as an application service provider, a hosted service, a computer or processing service business, a service bureau, an outsourced facility or service or on timesharing basis or similar basis or otherwise on behalf of any third party, including without limitation using the Software or Deliverables to convert, generate or otherwise process the work, documents or data of third parties or making available the functions of the Software or Deliverables available for use by third parties;

6. use the Software or Deliverables in a manner that infringes upon the lawful rights of others or in contravention of any and all applicable laws; or

7. export or re-export any Software or Deliverables, directly or indirectly in contravention any applicable export control laws and regulations.

(b) **Unauthorized Access.** Customer agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Software. Customer shall be responsible for identifying and authenticating all Users, for approving access by such Users to the Software, for controlling against unauthorized access by Users, and for maintaining the confidentiality of usernames, passwords and account information. Customer shall also be responsible for the confidentiality and the timely and proper termination of User records in Customer’s local (intranet) identity infrastructure or on Customer’s local computers. Customer is responsible for all activities that occur under Customer’s and Users usernames, passwords or accounts or as a result of Customer’s or Users’ access to the Software and agree to notify Adlib immediately of any unauthorized use. For purposes of these T&Cs, “unauthorized access” includes any use of the Software by or on behalf of Customer following termination or expiration of the Subscription Term.

(c) **No Sensitive Information.** CUSTOMER ACKNOWLEDGES THAT THE SOFTWARE HAS NOT BEEN DESIGNED TO PROCESS OR MANAGE SENSITIVE INFORMATION (UNLESS EXPRESSLY AGREED BY THE PARTIES) AND ACCORDINGLY, AS APPLICABLE, CUSTOMER AGREES NOT TO USE THE SOFTWARE TO COLLECT, MANAGE OR PROCESS SENSITIVE INFORMATION. ADLIB WILL NOT HAVE AND SPECIFICALLY DISCLAIMS ANY LIABILITY THAT MAY RESULT FROM CUSTOMER’S USE OF THE SOFTWARE TO COLLECT, PROCESS OR MANAGE SENSITIVE INFORMATION.

(d) **Protective Measures.** Customer acknowledges that the Software may contain technological measures designed to: (i) authorize or authenticate the validity of the Software; or (i) prevent the illegal usage of the
Software or usage of the Software that violates the terms and conditions of this Agreement, including usage that exceeds the Licensing Metrics. Such measures may include the transmission to Adlib or its agents the activation ID for the Software and a hardware fingerprint that uniquely identifies the computer on which the Software is installed, in order to activate or validate the Software to enable installation or to enable some or all of functionality of the Software. Customer consents to the transmission of such information to Adlib and agrees not to circumvent or attempt to circumvent such measures.

2.3 Additional Services. Subject to the terms and conditions of the Agreement and in consideration for the payment of the Additional Fees, for the duration of the applicable Subscription Term, Customer shall have the non-exclusive, non-assignable right to access and use the Additional Services acquired under the applicable Order Form, for the Subscription Term or the then-current Renewal Term, solely for Customer's internal business operations. Customer may allow Users to use such Additional Services and shall remain responsible for such Users' compliance with this Agreement. Customer does not acquire under this Agreement any right or subscription to use Additional Services in excess of the scope and/or duration stated in the applicable Order Form.

SECTION 3. DISASTER RECOVERY SOFTWARE.

3.1 Cold DR. If any Software is identified as Disaster recovery software in an Order Form, Customer may install up to one copy of the Software, in such an environment or facility for Disaster recovery purposes, subject to the following conditions:

(a) Customer may only use such copies in Production Use solely in the event of a Disaster. In the event of a Disaster, the Cold DR Software may be used in Production Use for a period of up to 90 consecutive days. At the conclusion of the 90-day period, if the production site has not been restored, the Customer must request, in writing, to transfer its production license to the Disaster recovery site. In the absence of a Disaster or upon restoration of Customer's primary production environment, any Cold DR equipment on which the Software is deployed must be turned off or remain idle. Notwithstanding the foregoing, Cold DR Software may be used for failover readiness testing as deemed reasonable and necessary but only for up to two (2) testing days in any twelve-month period. In no event may Customer's aggregate number of Software in Production Use at any given time, whether using backup and/or recovery copies or otherwise, exceed the applicable Licensing Metrics.

(b) Customer's right to use the Cold DR Software automatically terminates if Customer fails to remain current on its Subscription license for the primary Software in Production Use. Separate (or additional) support is not provided for the Cold DR Software, but Customer may keep the installed version of the Cold DR Software updated by using the updates made available under the Support Policy of the primary Software in Production Use.

3.2 Hot DR. Customer may elect to purchase separately an Adlib Hot DR Software license.

SECTION 4. THIRD PARTY PRODUCTS

Customer acknowledges and agrees that Customer may be required to procure or license certain Third-Party Products, and that failure to use or procure such Third-Party Products that meet the minimum requirements for the Software may result in the inability to use the Software. Adlib makes no representations or warranties concerning any Third-Party Products. Customer acknowledges that: (a) Third Party Products may be governed by separate licenses, agreements or terms and conditions and Adlib has no obligation or liability to Customer in respect thereof, even if provided or made available by Adlib; and (b) Customer is solely responsible for procuring, managing and supporting any Third Party Products not provided or made available by Adlib at Customer's cost and expense, and is solely responsible for compliance with any applicable licenses, agreements or terms and conditions governing same.

SECTION 5. FEES; EXPENSES

5.1 Fees. In consideration for the license rights granted hereunder and Additional Services, Customer shall pay to Adlib the applicable fees as set forth in an applicable Order Form. Except as otherwise provided in the Order Form or this Agreement, payment obligations are non-cancellable and fees paid are non-refundable, and quantities purchased cannot be decreased during the relevant Subscription Term.

5.2 Payment Terms. Unless otherwise specified in an Order Form or SOW, payments of Subscription Fees, Additional Fees and Professional Services Fees shall be prepaid according to the frequency stated in the applicable Order Form and/or SOW. All fees are non-refundable, except in accordance with the terms of this
Agreement. Unless stated otherwise in an Order Form or a SOW, all invoices are due within thirty (30) days after the date of invoice and will be paid via Electronic Funds Transfer (EFT) payments or check, or as otherwise agreed by Adlib. All references to currency are deemed to mean lawful money of the United States of America, unless expressed otherwise in an applicable Order Form or SOW. Notwithstanding any provision to the contrary in this Agreement or any Order Form or SOW, the total amount of the Subscription Fees for the first one-year Subscription Term shall not exceed $40,000.

5.3 Annual Increases. Except as otherwise set forth in an Order Form, Subscription Fees are subject to a 2% annual increase after the initial Subscription Term.

5.4 Expenses. Customer shall reimburse Adlib for all reasonable pre-approved expenses incurred by Adlib in the performance of the Professional Services. For further clarification, Adlib may not incur any such expense in the performance of this Professional Services without the Customer's expressed approval.

5.5 Taxes. All fees exclude, and Customer shall be responsible for, payment of sales, use, all gross receipts or gross margin type tax, or similar state or local taxes directly related to or assessed with respect to Customer's use of the Software and performance of the Professional Services. Customer will have no liability for Adlib's employment or income taxes. If Customer is located in the European Union, all fees are exclusive of any VAT and Customer represents that Customer is registered for VAT purposes in its member state. At Adlib's request, Customer will provide Adlib with the VAT registration number under which Customer is registered in its member state. If Customer subject to GST, all fees are exclusive of GST. Customer shall hold Adlib harmless from and indemnify Adlib against all claims and liability arising from any failure to pay such taxes or fees.

5.6 Overdue Charges. All undisputed payments made after their due date will incur a daily simple interest from the original invoice due date at a rate equal to one percent (1%) per month or the maximum rate, to the extent permitted by applicable law, whichever is lower. If Customer does not pay Adlib within thirty (30) days after the due date of any invoice, Adlib may, reserving Adlib's remedies or rights hereunder, accelerate the unpaid fee obligations so that they become immediately due and payable, and/or suspend access to the Software and provision of the Additional Services or Professional Services until such payments are made, or terminate the applicable Order Form(s), SOW(s) and/or this Agreement.

SECTION 6. PROTECTION OF CUSTOMER DATA
6.1 Safeguards. Adlib's safeguards will include annual security standard audits for the Software and measures for preventing access, use, modification or disclosure of Customer Data by Adlib personnel except to provide the Software and prevent or address service or technical problems, as compelled by applicable law, or as expressly permitted by Customer in writing. To the extent any Customer Data includes Personal Data, the terms of the DPA are hereby incorporated by reference and will apply. The DPA sets out how Adlib will process Personal Data on Customer's behalf in connection with the Software provided to Customer under this Agreement. Adlib will maintain commercially appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data, as described in the DPA, including security measures in Schedule 2 of the DPA.

6.2 Standard Contractual Clauses. To the extent Adlib processes Personal Data from the European Economic Area, the United Kingdom and/or Switzerland or Personal Data that is subject to Data Protection Laws (as defined in the DPA), the Standard Contractual Clauses shall apply, as further set forth in the DPA. For the purposes of the Standard Contractual Clauses, Customer and its applicable Affiliates are each the data exporter, and Customer's acceptance of this Agreement, and an applicable Affiliate's execution of an Order Form, shall be treated as its execution of the Standard Contractual Clauses and Appendices.

6.3 CCPA/CPRA. Adlib shall, where applicable, comply with CCPA/CPRA and provide the same level of privacy protection as required by these legal acts. Adlib acknowledges and agrees that personal information is disclosed by the Customer only for purposes of the services provision hereunder and Adlib will not sell Customer personal information as defined in the CCPA/CPRA. Adlib agrees that the Customer may take reasonable and appropriate steps to help ensure that Adlib uses the personal information transferred in a manner consistent with the Customer's obligations under the CCPA/CPRA. Adlib will notify the Customer if it makes a determination that it can no longer meet its obligations under the CCPA/CPRA. Adlib hereby grants the Customer the right, upon notice, to take reasonable and appropriate steps to stop and remediate unauthorized use of Customer personal information.
6.4 Sensitive Personal Information. Customer may not provide Adlib access to health, payment card or similarly sensitive personal information that imposes specific data security obligations for the processing of such data unless specified in the applicable Order Form.

SECTION 7. SUPPORT

7.1 Subscription Licenses. Subject to the terms and conditions of the Agreement, and in consideration for the payment of the applicable fees for Support, Adlib will provide applicable Support, as specified in an Order Form, for the duration of the Subscription Term and Renewal Term, as applicable. Customer may elect to purchase separately other support products from Adlib as an Additional Service.

7.2 Support Policy. Adlib’s Support Policy may be amended by Adlib from time to time in its discretion, provided Customer is given written prior notice, and such amendments or modifications do not reduce the level of support provided, where applicable, for the remainder of the Subscription Term and every Renewal Term.

7.3 Exclusions. Adlib’s Support does not include on-site work, custom development, user training, implementation services, integration services, consultation or professional advice, or issues arising from improper use, use with third party products, improper use or use of a prior version or release.

SECTION 8. PROFESSIONAL SERVICES

8.1 Statements of Work. From time to time, Adlib shall perform consulting, implementation and other professional services including, but not limited to, configuration, implementation, training, or other consultation, related to any Adlib product or service that Customer has received rights to use under this Agreement, (the “Professional Services”) and deliver the Deliverables specified in one or more mutually agreed upon statements of work to this Agreement, signed by both Parties, each of which will incorporate the terms and conditions set forth in this Agreement (each, a “SOW”). Unless expressly set out in a SOW, Professional Services does not include Support or other support of Deliverables. Adlib will perform Professional Services based on a schedule mutually agreed to by the Parties in the applicable SOW. In any event, Adlib will continue to be free to perform similar services and develop deliverables that may be similar with those produced under a SOW for itself or its other customers using its general knowledge, skills and experience that are acquired or used in the course of providing the Professional Services.

8.2 Bundled Services. Customer may purchase a package of bundled Professional Services referred to herein as “Bundled Services”. Bundled Services will be described and specified in the applicable Order Form, typically without the execution of a SOW. Therefore, except where the Parties enter into a SOW for Bundled Services, all references to a SOW in Sections 5.2, 8, and 11.2(b) of this Agreement (as they relate to Bundled Services) will refer to the applicable Order Form.

8.3 Personnel; Subcontractors. Adlib reserves the right to determine which of its personnel and subcontractors shall be assigned to perform the Professional Services and the right to replace or reassign such personnel. Neither Party shall be deemed a joint employer of the other’s employees or subcontractors, each Party being responsible for any and all claims by its employees and subcontractors. Adlib may assign or delegate its obligations hereunder to third party subcontractors, provided such subcontractors are held to the same confidentiality restrictions as Adlib and that Adlib remains fully responsible for its obligations under this Agreement.

8.4 Customer Responsibilities; Assumptions.

(a) Responsibilities. In connection with Adlib’s provision of the Professional Services and development of Deliverables, Customer shall have the following responsibilities (collectively, the “Customer Responsibilities”):

(1) provide Adlib with reasonable and timely access to the facilities, information, materials and personnel of Customer as reasonably required for Adlib to perform its obligations hereunder;

(2) promptly notify Adlib of any changes in any assumptions upon which the performance of a SOW were premised, any changes to Customer’s systems, environments or other facts that may have an impact on the performance of the Professional Services or the delivery of Deliverables, or any problems relating to the Professional Services or Deliverables of which Customer becomes aware;
(3) cause other service providers or suppliers whose cooperation is reasonably required by Adlib in the performance of the Professional Services or delivery of Deliverables to cooperate and provide reasonable information and assistance, within the scope of their obligations, to Adlib.

(4) provide prompt and timely decisions and approvals by Customer (upon which Adlib shall be entitled to rely);

(5) be responsible for the operation and use of the Deliverables and for ensuring that the Professional Services and the Deliverables meet Customer’s requirements;

(6) retain responsibility for its compliance with all applicable federal, provincial, state and local laws and regulations;

(7) obtain all consents necessary from third parties required for Adlib to perform its obligations under this Agreement; and

(8) perform those tasks and fulfill those responsibilities and obligations of the Customer specified in each SOW.

(b) Acknowledgement. Customer acknowledges that:

(1) Adlib has relied upon assumptions that may be contained in each SOW and representations, information or materials provided by Customer or set out in each SOW (collectively, the “Assumptions”) that relate to the Professional Services or the Deliverables; and

(2) the performance of obligations by Adlib is dependent on Customer’s timely and effective performance of Customer Responsibilities and the accuracy, completeness, realization or continued validity of the Assumptions.

8.5 Change Management Process.

(a) Change. From time to time during the term of each SOW, Customer may request, or Adlib may propose, that Adlib implement a change to the Professional Services or Deliverables which may require an extension in the schedule and/or an increase in the fees and expenses and/or an increase in the work that Adlib is to perform (each, a “Change”), including: (i) a change to the scope or functionality of a Deliverable; (ii) a change in the prioritization or manner in which Adlib is performing the Professional Services; or (iii) a change to the scope of the Professional Services.

(b) Change Order. Pursuant to Section 8.5(a) above, Adlib may prepare and provide to Customer a proposed change order, identifying the impact and setting forth the particulars and any applicable adjustments in the schedule and/or payments to Adlib (each a “Change Order”). In the event the Parties agree, acting reasonably, each Party shall promptly sign such proposed Change Order which shall, upon such execution, amend the relevant SOW. Changes to the scope of the Professional Services or any Deliverables shall be made only in a writing executed by authorized representatives of both Parties. Adlib will not be obligated to work on a Change until the Parties agree in writing upon its price and/or schedule impact. Notwithstanding, if Adlib, at the request of Customer, performs work that is not covered by a SOW or that exceeds the scope of the Professional Services defined in the applicable SOW, such work shall be deemed Professional Services provided pursuant to this Agreement.

8.6 Acceptance/Rejection. All Professional Services and Deliverables submitted to the Customer for approval shall be deemed accepted if, (a) Customer provides Adlib with a notice of acceptance; or (b) 10 days after delivery, if Customer has not provided Adlib with a notice of rejection. Customer may reject a Professional Service or Deliverable only if it materially deviates from any agreed upon specifications and requirements, as set out in the applicable SOW, and only via a notice setting forth the nature of such deviation and the basis for not approving the Professional Service and/or Deliverable. In the event of such rejection, Adlib shall correct the deviation and redeliver the Professional Service and/or Deliverable within 10 days, or as otherwise agreed upon by the Parties, based on the estimated effort required. After redelivery pursuant to the previous sentence, the Parties shall again follow the acceptance procedures set forth in this Section 8.6.

8.7 Deliverables. Upon full and final payment, Customer will have a non-transferable, non-exclusive paid up right and license for purposes of its internal business use to use, copy, modify and prepare derivative works of any Deliverables developed in the course of the Professional Services provided under a SOW, at all times
limited to Customer's use with the Software and subject to any restrictions of any third-party materials embodied in the Deliverables and disclosed to Customer.

8.8 Insurance. **Insurance Requirements.** During the entire term of this Agreement, Adlib shall maintain the insurance coverage described in the Insurance Terms below. Full compensation for all premiums that Adlib is required to pay for the insurance coverage described herein shall be included in the compensation specified under this Agreement. No additional compensation will be provided for Adlib's insurance premiums. Any available insurance proceeds in excess of the specified minimum limits and coverages shall be available to the City.

Adlib's liability to the City is not in any way limited to or affected by the amount of insurance coverage required or carried by Adlib in connection with this Contract.

8.8.1 **General Liability Minimum Scope and Limits of Insurance Coverage.** Commercial General Liability Insurance is required providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, arising out of activities performed by or on behalf of Adlib and subcontractor, products and completed operations of Adlib and subcontractor, and premises owned, leased, or used by Adlib and subcontractor, with limits of not less than one million dollars ($1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.

The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of: activities performed by or on behalf of Adlib and subcontractor; products and completed operations of Adlib and subcontractor; and premises owned, leased, or used by Adlib and subcontractor.

8.8.3 **Excess Insurance.** The minimum limits of insurance required above may be satisfied by a combination of primary and umbrella or excess insurance coverage, provided that any umbrella or excess insurance contains, or is endorsed to contain, a provision that it will not apply to the City, and any insurance or self-insurance maintained by the City, its officials, employees, or volunteers will be in excess of Adlib's umbrella or excess coverage and will not contribute to it.

8.8.4 **Workers' Compensation Minimum Scope and Limits of Insurance Coverage.** *(Check the applicable provision.)*

- **Workers’ Compensation Insurance is required with statutory limits and Employers’ Liability Insurance with limits of not less than one million dollars ($1,000,000).** The Workers’ Compensation policy shall include a waiver of subrogation in favor of the City.

- **No work or services will be performed on or at CITY facilities or CITY Property, therefore a Workers’ Compensation waiver of subrogation in favor of the CITY is not required.**

- **No Workers’ Compensation insurance is required, and by signing this Contract, Adlib certifies as follows:**

  “Adlib certifies that its business has no employees, and that it does not employ anyone, and is therefore exempt from the legal requirements to provide Workers’ Compensation insurance. If, however, Adlib hires any employee during the term of this Contract, Adlib understands that Workers’ Compensation with statutory limits and Employer’s Liability Insurance with a limit of not less than one million dollars ($1,000,000) is required. The Workers’ Compensation policy will include a waiver of subrogation in favor of the City.”
8.8.5. **Other Insurance Provisions.** The policies must contain, or be endorsed to contain, the following provisions:

A. Adlib's insurance coverage, including excess insurance, shall be primary insurance as respects the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officials, employees or volunteers will be in excess of Adlib's insurance and will not contribute with it.

B. Any failure to comply with reporting provisions of the policies will not affect coverage provided to the City, its officials, employees or volunteers.

C. Coverage shall state that Adlib's insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

D. Adlib shall provide the City with 30 days written notice of cancellation or material change in the policy language or terms.

8.8.6 **Acceptability of Insurance.** Insurance must be placed with insurers with a Bests' rating of not less than A:VI. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Exhibit C must be declare to and approved by the City in writing before execution of this Contract.

8.8.7 **Verification of Coverage.**

A. Adlib shall furnish City with certificates and required endorsements evidencing the insurance required. Certificates of insurance must be signed by an authorized representative of the insurance carrier. Copies of policies shall be delivered to the City Representative on demand.

B. Adlib shall send all insurance certificates and endorsements, including policy renewals, during the term of this Agreement directly to:

City of
Sacramento
C/o Exigis LLC
PO Box 947
Murrieta, CA 92564

C. Certificate Holder must be listed as:

City of
Sacramento
C/o Exigis LLC
PO Box 947
Murrieta, CA 92564

D. The City may withdraw its offer of Agreement or cancel this Agreement if the certificates of insurance and endorsements required have not been provided before execution of this Contract. The City may withhold payments to Adlib and/or cancel the Agreement if the insurance is canceled or Adlib otherwise ceases to be insured as required herein.

8.8.8 **Subcontractor Insurance Coverage.** Adlib shall require and verify that all subcontractors maintain adequate insurance coverage for the types of services such contractors provide.

8.8.9 **Cyber Liability Insurance.** Adlib shall obtain cyber liability insurance, with limits not less than $2,000,000 per occurrence or claim. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Adlib in this agreement and shall include, but not be limited to, claims
involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If policy is a claims-made policy such coverage shall be continued for five (5) years following the completion of all services and additional service under this agreement. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Adlib must purchase “extended reporting” coverage for minimum of five (5) years after completion of contract work.

8.8.10 Technology Professional Liability (E&O). Adlib shall obtain technology professional liability, with limits not less than $1,000,000 per occurrence or claim. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Adlib under this Agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations. If policy is a claims-made policy, such coverage shall be continued for three (3) years following the completion of all services and additional services under this Contract. The retroactive date must be prior to the date this Agreement is approved or any services are performed.

8.9 Solicitation of Employees. Each Party agrees not to solicit or hire, directly or indirectly, any personnel or representatives of the other Party involved with the performance of such Party’s obligations under a SOW, at any time during the term of each such SOW and for six (6) months thereafter.

8.10 Access. If onsite performance of Professional Services is agreed upon by the Parties in an applicable SOW, Customer shall provide Adlib with proper access, subject to Adlib’s compliance with all reasonable security rules and regulations, to Customer’s premises as reasonably required for Adlib to perform the applicable Professional Services.

SECTION 9. CONFIDENTIALITY

9.1 Confidential Information. For purposes of this Agreement “Confidential Information” shall mean all proprietary information, financial information and other commercially valuable or sensitive information in whatever form, including, without limitation, all Customer Data, computer programs, code, algorithms, names and expertise of employees and consultants, know-how, formulas, processes, ideas, inventions (whether patentable or not), schematics and other technical, business, financial and product development plans, forecasts, strategies and any other materials or information of whatever description which a Party has identified as confidential, proprietary or of a commercially sensitive nature or a Party should reasonably know is regarded as confidential, proprietary or of a commercially sensitive nature by the other Party. In addition to the foregoing, Confidential Information shall include third party software, if any, that may be provided to Customer under this Agreement, including any related source or object codes, technical data, data output of such software, documentation, or correspondence owned by the applicable licensor. The term “Confidential Information” shall not include Personal Data, which is separately defined and addressed in Section 6 above and the DPA, as applicable.

9.2 Use; Disclosure. During the Term and for a period of two (2) years thereafter, each Party shall use no less than reasonable care to protect the confidentiality of the other Party’s Confidential Information. Neither Party may disclose the other Party’s Confidential Information to any third party, except as may be required: (1) to implement, perform and enforce the terms of this Agreement; (2) by applicable law; or (3) under appropriate
nondisclosure terms to auditors, accounting, financial and legal advisers, or to an existing or potential investor, acquiring company, bank or other financial institution in connection with a merger, acquisition, financing, loan or similar corporate transaction. In no event may the Confidential Information of disclosing party be disclosed to its competitor. The Parties acknowledge that they may have in development similar solutions and that nothing in this Agreement is intended to prevent either Party from independently developing, offering, supporting and providing similar solutions, provided it is done without use of or reference to the other party’s Confidential Information.

9.3 Exceptions. The following shall not be Confidential Information: (a) information that was rightfully in the receiving party’s possession without restriction prior to disclosure; (b) information that was in the public domain at the time of disclosure, or which becomes public domain without breach of this Agreement; (c) information that was rightfully disclosed to receiving party by a third party without restriction; or (d) information that was independently developed or created by the receiving party. Either Party may disclose Confidential Information if and to the extent such disclosure is required by law or order of a court or other governmental authority or regulation. Additionally, Customer may disclose Confidential Information in the event Customer receives a California Public Records Act request for the Information and the Customer does not receive an order from a court with competent jurisdiction preventing the Customer from disclosing the Information within 5 calendar days of the Customer’s notice of the request to the Adlib.

9.4 Terms of Agreement Confidential. Each of the Parties agrees not to disclose to any third party the terms of this Agreement, including pricing, without the prior written consent of the other Party hereto, except to advisors, investors and others on a need-to-know basis under circumstances that reasonably ensure the confidentiality thereof, or to the extent required by law. Customer hereby consents to Adlib using Customer’s name and company logo on Adlib’s customer list and website.

SECTION 10. OWNERSHIP
10.1 Customer Intellectual Property Rights. All rights, title and interest to the Customer Data (except for Operational Data), including intellectual property rights developed pursuant to a SOW relating to Customer Data, will be the exclusive property of Customer. Except as provided in this Agreement, rights to use Customer Data granted to Adlib do not convey or otherwise transfer to Adlib any rights or licenses (including implied licenses) in the Customer Data or any Intellectual Property Rights thereto. Adlib will use Customer Data only to the extent necessary to provide the Software, Additional Services, Professional Services or Support, otherwise meet its obligations under this Agreement, and only as permitted by applicable law and this Agreement. Customer acknowledges that Adlib collects and uses data and information on use of the Software to provide, protect, maintain, support, improve the Software and for other internal business purposes. Customer represents that it has all necessary rights to the Customer Data provided to Adlib in connection with the use of the Software as described herein.

10.2 Adlib Intellectual Property Rights. As between the Parties, all rights, title and interest to the (a) the Software and Updates and derivative works thereof, including without limitation all graphics, user interfaces, logos, and trademarks reproduced therein, (b) the Deliverables, and (c) Operational Data are owned exclusively by Adlib and its licensors; All ideas, concepts, methods, know-how and techniques of Adlib or related to the Software, Updates and Deliverables remain the sole property of Adlib. Except as provided in this Agreement, rights granted to Customer do not convey or otherwise transfer to Customer any rights or licenses (including implied licenses) in the Software, Updates or Deliverables, or any Intellectual Property Rights therein, and any rights in the Software, Updates or Deliverables, or any Intellectual Property Rights therein not expressly granted in the Agreement are reserved by Adlib. Customer agrees not to display or use Adlib service marks, logos and product and service names in any manner without Adlib’s express prior written permission. The trademarks, logos and service marks and content of Third Party Products providers are the property of such third parties, Customer is not permitted to use such third party marks without the prior written consent of any such third party.

10.3 Modifications. Adlib will own each Modification made by or on behalf of Adlib or its agents, consultants and representatives, with or without Customer’s involvement. Unless expressly agreed in a SOW, Adlib shall have sole discretion to determine if, and when, such Modification may be added to the base version of the next or a subsequent Update of the Software. Where applicable, only upon inclusion of a Modification in the Software shall Support be available for such Modification.
10.4 Proprietary Notices. Where copies are permitted hereunder, Customer agrees to include all proprietary rights legends on all copies of the Software in the same form and location as the legends on or in the originals and not to remove or attempt to remove any such legends.

10.5 Feedback. Excluding any of Customer’s Confidential Information and Personal Data, and any of Customer’s documents, data or information that Customer processes using the Software, Customer grants Adlib a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Software (without attribution) any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or any Users relating to the use, testing or evaluation of Software, including in the course of utilizing Support, other support or any Professional Services.

SECTION 11. REPRESENTATIONS; WARRANTIES; EXCLUSIONS; DISCLAIMERS

11.1 Representations. Each Party represents that it has validly entered into this Agreement and has the legal power and authority to do so, and shall, at its own expense, comply with all laws, regulations and other legal requirements that apply to it and this Agreement.

11.2 Warranties.

(a) Software Warranty. Adlib represents and warrants to Customer that the Software will operate substantially in accordance with the documentation accompanying it for a period of forty-five (45) days following the first Production Use of the Software by Customer. For any breach of the foregoing warranty, provided Customer reports such breach in writing within the warranty period in sufficient detail for Adlib to reproduce the failure, Adlib’s sole obligation hereunder shall be to either make available to Customer any correction or workaround for such non-conformity as and when made generally available by Adlib to all Customers of the Software, or, at Adlib’s sole option, terminate the license for such Software and refund to Customer the license fees pre-paid by Customer for such Software. The foregoing warranty does not apply to Software that has been improperly stored, installed, operated, used, or maintained, failures arising from any breach by Customer of this Agreement, or failures that are not reproducible by Adlib, acting reasonably.

(b) Professional Services Warranty. Adlib represents and warrants to Customer that (a) Adlib has the capability, experience and means required to perform and complete the Professional Services as contemplated by and in accordance with the terms and conditions of this Agreement; (b) the Professional Services will be performed using skilled, qualified and suitable personnel, equipment and material; and (c) the Professional Services shall be performed with at least reasonable care in a diligent, professional and workmanlike manner in accordance with (i) generally accepted industry standards, and (ii) the levels specified in this Agreement and/or any applicable SOW. For any breach of the foregoing warranty, provided the claim is brought to Adlib’s attention in writing within thirty (30) days after the Professional Services are performed, Adlib’s sole obligation hereunder and under the applicable SOW, shall be to perform or re-perform the Professional Services that are the subject of the claim.

(c) Deliverables Warranty. Adlib represents and warrants to Customer that Deliverables which are original content will conform in all material respects to their relevant specifications. For any breach of the foregoing warranty, provided the claim is brought to Adlib’s attention in writing within thirty (30) days after delivery of such Deliverable to Customer, Adlib’s sole obligation hereunder and under the applicable SOW, shall be to correct any Deliverables not in compliance with this warranty.

11.3 Exclusions. Subject to the incident management process set forth in Adlib’s Support Policy, Adlib does not guarantee that the Software (a) will perform error-free or uninterrupted, (b) will operate in combination with any content, applications, or any other hardware, software, systems, services or data not provided by Adlib, and or (c) will meet Customer’s own requirements, specifications or expectations. Customer acknowledges that Adlib does not control the transfer of data or communications facilities, including the internet, and that the Software may be subject to limitations, delays, and other problems inherent in the use of such communications facilities. Adlib is not responsible for any delays, delivery failures, or other damage resulting from such problems. Adlib is not responsible for any issues related to the performance, operation or security of the Software that arise from Customer’s Content or any third-party Content. Adlib does not make any representation or warranty regarding the reliability, accuracy, completeness, correctness, or usefulness of third-party Content or services, and disclaims all liabilities arising from or related to third party Content or services. The Software may contain features designed to interoperate with Non-Adlib Applications. Adlib cannot guarantee the continued availability of such Software features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the
provider of a Non-Adlib Application ceases to make the Non-Adlib Application available for interoperation with the corresponding Software features in a manner acceptable to Adlib.

11.4 Disclaimers. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ADLIB DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND THOSE ARISING BY STATUTE OR IN LAW, OR FROM A COURSE OF DEALING OR USAGE OF TRADE. ADLIB CANNOT AND DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE WITHOUT INTERRUPTIONS, THAT IT WILL BE ERROR-FREE, VIRUS-FREE OR THAT THE RESULTS OBTAINED FROM ITS USE WILL BE ACCURATE, RELIABLE OR CURRENT.

SECTION 12. INDEMNIFICATION

12.1 Mutual Indemnification. Each Party shall indemnify, defend and hold harmless the other, its suppliers, agents, shareholders and their employees, directors, officers and representatives, from and against losses, damages or expenses (including reasonable legal fees and court costs), and all third-party claims, demands or actions for losses, damages or expenses, arising from or relating to: (i) any breach of this Agreement; or (ii) bodily injury or death of any individual or damage to real and/or tangible personal property directly caused by the negligence or willful misconduct of the indemnifying Party, its personnel or agents in the course of performing its obligations hereunder; provided the indemnifying Party is notified within 30 days of the indemnified Party’s receipt of notice of the claim, and the indemnifying Party is given the necessary authorization, information, and full cooperation and assistance by the indemnified Party for the sole defense of same.

12.2 Intellectual Property Indemnification. For the purposes of this Section 12.2, “Material” shall mean any information, design, specification, instruction, software, service, data, hardware, or material provided by a Party. The term “Material” defined above does not include Separately Licensed Third-Party Technology. If a third party makes a claim against Customer that any Material of the Software, or any component thereof, infringes such third party’s intellectual property rights, Adlib, at its sole cost and expense, will defend Customer against the claim and indemnify Customer from the damages, liabilities, costs and expenses awarded by a court of competent jurisdiction to the third party claiming infringement. Adlib, at its sole discretion, may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a right or subscription to allow for continued use by Customer, or if these alternatives are not commercially reasonable, Adlib may end the right or subscription for, and, where applicable, require return of, the applicable Material and refund any unused, prepaid fees Customer may have paid to Adlib for such Material. If such return materially affects Adlib’s ability to meet its obligations under this Agreement, then Adlib may, at its option and upon 30 days’ prior notice, terminate this Agreement. Adlib will not indemnify Customer if Customer: (a) alters the Material or uses it outside the specified scope of use, (b) uses a version of the Material which has been superseded, if the infringement claim could have been avoided by using an unaltered current version of the Material which was made available to Customer, or (c) continues to use the applicable Material after the end of the right or subscription to use that Material. Adlib will not indemnify Customer to the extent that an infringement claim is based upon any information, design, specification, instruction, software, service, data, hardware or material not furnished by Adlib. Solely with respect to Separately Licensed Third Party Technology that is part of the Software and that is used: (a) in unmodified form; (b) as part of or as required to use the Software; and (c) in accordance with the usage grant for the relevant Software; all other terms and conditions of this Agreement, Adlib will indemnify Customer for infringement claims for Separately Licensed Third Party Technology to the same extent as Adlib is required to provide infringement indemnification for Materials under the terms of this Agreement.

12.3 Control of the Defense. The indemnifying Party shall have the right to select counsel to defend any such action and settle any such claim. The indemnifying Party shall not be liable to the indemnified Party for any compromise or settlement made by the indemnified Party without the Indemnifying Party’s prior written consent, or for any legal fees and expenses incurred by the indemnified Party in connection with any such claim. The indemnified Party shall have no authority to settle any claim on behalf of the indemnifying Party.

SECTION 13. LIMITATIONS AND Exclusions

13.1 Limitation of Liability. EITHER PARTIES’ SOLE AND EXCLUSIVE LIABILITY FOR ANY CLAIM IN ANY MANNER ARISING FROM OR RELATED TO THIS AGREEMENT, ANY ORDER FORM, THE
SOFTWARE, THE ADDITIONAL SERVICES, THE PROFESSIONAL SERVICES OR DELIVERABLES, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL BE (I) IN RESPECT OF ALL OTHER CLAIMS ARISING FROM OR RELATED TO A SPECIFIC SOW THE PAYMENT OF DIRECT DAMAGES WHICH SHALL IN NO EVENT, IN THE AGGREGATE, EXCEED THE FEES RECEIVED BY ADLIB FOR THE WORK INVOLVED UNDER SUCH APPLICABLE SOW; AND (II) IN RESPECT OF ALL CLAIMS ARISING FROM OR RELATED TO THIS AGREEMENT, THE PAYMENT OF DIRECT DAMAGES WHICH SHALL IN NO EVENT, IN THE AGGREGATE, EXCEED THE FEES RECEIVED BY ADLIB HEREUNDER IN THE IMMEDIATELY PRECEDING TWELVE-MONTH PERIOD.

13.2 Non-Direct Damages. In NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, AGGRAVATED OR EXEMPLARY DAMAGES, SUCH AS LOSS OF REVENUE, PROFITS, OR EXPECTED SAVINGS, BUSINESS INTERRUPTION, OR OTHER PECUNIARY LOSS.

13.3 Exclusions. THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS SECTION 13 SHALL NOT APPLY IN RESPECT OF: (I) BODILY INJURY (INCLUDING DEATH) OR DAMAGE TO, OR LOSS OR DESTRUCTION OF, ANY REAL OR TANGIBLE PERSONAL PROPERTY; (II) BREACHES OF CONFIDENTIALITY; OR (III) A PARTY'S INDEMNIFICATION OBLIGATIONS.

SECTION 14. TERM AND TERMINATION

14.1 Term. The term of this Agreement shall commence on the Effective Date (set forth on the initial Order Form). ("Term"). After the initial Subscription Term (first year), Adlib may increase the prices and fees as specified in Subsection 5.3. The initial subscription period for a Subscription License and for Additional Services will be set out in the Order Form ("Subscription Term"), as may be renewed by the Parties on mutually agreed to terms (each renewal period, a "Renewal Term").

14.2 Termination for Cause. Either Party may terminate this Agreement for cause upon thirty (30) days' written notice to the other party of a material breach of this Agreement if such breach remains uncured after the expiration of such period. Such notice shall specify the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach. Notwithstanding the foregoing to the contrary, payment obligations must be cured within ten (10) days. Except as set forth in this Section 14.2, this Agreement may not otherwise be terminated prior to the end of the Subscription Term. Customer may not use the Software or Additional Services if it is in material breach of this Agreement.

14.3 Effect upon Termination.

(a) Amounts Due. Upon termination of this Agreement, any Order Form or any SOW, in addition to any other terms set forth therein: (a) Customer shall immediately pay Adlib for all remaining and unpaid installments for Subscription Licenses and Additional Services, a pro rata portion for Deliverables in progress, and expenses pre-approved by Customer and incurred by Adlib prior to the date of termination; (b) any and all rights granted to Customer under this Agreement shall immediately cease including Customer's (or Users') rights to access or use the Software or Additional Services, (c) except as may be required by applicable law, Adlib will delete or otherwise render inaccessible Customer's and its Users' Content and Customer Data that remains in the Services Environment, and (d) Customer shall destroy all copies of the Software in its possession or control, including removing software from Customer Servers or other computers, and shall certify same in writing, if so requested by Adlib.

(b) Order Forms and/or SOWs. The termination of this Agreement, an Order Form or any SOW will not affect any other Order Forms or SOWs then in effect, unless the Parties specifically agree in writing, and this Agreement will continue to govern such other Order Forms or SOWs until they are terminated, expiring or performance has been completed.

(c) Suspension. Any use of the Software or Additional Services in breach of this Agreement, SOWs or Order Forms, by Customer or Users that in Adlib's judgment threatens the security, integrity or availability of Adlib's services, may result in the immediate suspension of such use. Adlib will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to such suspension.

14.4 Use of Software. In the event Customer fails to remove the Software from its Servers or other computers, or fails to provide the required removal certification, as required in Section 14.3(a) above, the
Subscription License for the applicable Software will be automatically extended for a Subscription Term of twelve (12) months at the then current contract price for such Software, subject to price increases as set forth in Section 5.3.

14.5 Survival. The termination of this Agreement, any Order Form or any SOW, shall not release either Party from any obligation or liability accrued until such termination. The provisions of this Agreement, which by their nature or express terms survive termination of this Agreement, will survive any such termination.

SECTION 15. REPORTING; RECORDS: AUDIT RIGHTS

15.1 Reporting. Customer, upon request by Adlib but no more frequently than quarterly, shall report to Adlib a list of instances and version number of the Software and the total number of Servers and Users, as applicable to an Order Form. This report shall be transmitted by means of a method and format mutually agreeable to the Parties. An authorized senior level representative of Customer shall certify that the report is accurate and complete.

15.2 Records. Customer will maintain true books of account and other accurate and complete records containing all information necessary for the determination of Customer’s compliance with its obligations under this Agreement. will maintain true books of account and other accurate and complete records containing all information necessary for the determination of Customer’s compliance with all of its other obligations under this Agreement. Customer will retain such records for a period of three (3) years following the termination or expiration of the Term and will make such records available to Adlib and/or its representatives for inspection and copying during normal business hours and upon reasonable advance notice.

15.3 Audit. Adlib will be entitled to make such audits of the books of account and records described above once each year during the Subscription Term, at the time of termination of the License Subscription and once during the one (1) year period following the termination or expiration of the applicable Order Form. If any such audit reveals that Customer has underpaid Adlib or has failed to comply with any other obligation under this Agreement, then Adlib will promptly furnish to Customer a copy of the report setting forth the amount of the deficiency and/or describing such failure. If Customer has underpaid Adlib, Customer will remit such amount to Adlib within thirty (30) days of Customer’s receipt of such report. Furthermore, if the deficiency equals five percent (5%) or more of the total actual amount due for the period in question, Customer also will pay to Adlib the costs of the audit. Adlib also will have all other rights and remedies as provided under the Agreement and as available at law or in equity in the event of Customer’s failure to comply with any obligation under this Agreement.

SECTION 16. MISCELLANEOUS

16.1 Precedence. This Agreement shall take precedence over any form of shrink wrap, clickwrap or other form of license agreement that is not signed by both Parties in respect of any software licensed by Adlib to Customer. To the extent that this Agreement (including any Order Forms or SOWs) conflicts with or is inconsistent with any provision contained in any invoice provided by Adlib or in any purchase order or other document presented by Customer, the provisions of this Agreement will prevail. In the event of a conflict or inconsistency between the terms and conditions of this Agreement and any Order Form or SOW, the provisions of the Order Form or SOW will prevail over the terms and conditions of this Agreement but only to the extent of such conflict or inconsistency. Customer acknowledges that other terms or agreements provided by Adlib may apply if optional services or features are subsequently ordered or activated.

16.2 Independent contractors. Nothing in this Agreement or any exhibits creates or shall be deemed to create a partnership or joint venture or a relationship of principal and agent, employer-employee, master-servant, or franchisor-franchisee among or between the Parties. Neither Party has the power or authority, directly or indirectly, or through its employees or agents, to bind the other Party, incur obligations on the other party’s behalf, or otherwise represent or act on behalf the other Party.

16.3 Assignment. Except as otherwise permitted by this Section 16.3, this Agreement, the Software and any rights granted to Customer under this Agreement may not be transferred or assigned by Customer, in whole or in part, without the prior written consent of Adlib. Such consent not be unreasonably withheld, and any such attempted assignment or transfer shall be null and void. Notwithstanding the foregoing, either Party may assign all or any portion of its rights and obligations under this Agreement to any successor by way of merger consolidation or in connection with the sale or transfer of all or substantially all of its business assets relating this Agreement without the consent of the other Party, provided that (a) the assigning Party gives prompt written notice of such assignment to the other Party,
(b) this Agreement is not assigned to a competitor of the non-assigning Party, and (c) without the written consent of the non-assigning Party, no such assignment shall release from the assigning Party from any of its obligations under this Agreement and (d) the scope and Usage Limitations of the services specified in all current Order Forms shall not be exceeded by the successor entity.

Any attempted assignment in violation of this section is null and void. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective permitted successors and assigns.

16.4 Force Majeure. Neither Party shall be liable for any delays or failures in performance (other than payment obligations hereunder) due to circumstances beyond its reasonable control; provided, however, that the non-performing Party shall use commercially reasonable efforts to promptly notify the other Party of the force majeure stating the nature of the event, its anticipated duration, and any action being taken to avoid or minimize its effect.

16.5 Governing Law; Jurisdiction. This Agreement will be governed by and construed under the laws of the State of California. Each Party irrevocably agrees to the non-exclusive jurisdiction of the courts of the State of California for any claim related to this Agreement or the Software. The Parties will endeavor to settle amicably by mutual discussions any disputes, differences, or claims whatsoever related to this Agreement. Failing such amicable settlement, any controversy, claim or dispute arising under or relating to this Agreement shall be resolved with applicable law as outlined above.

16.6 Entire Agreement. This Agreement incorporates by reference all exhibits, schedules, Order Forms or SOWs. This Agreement, together with such referenced items constitute the entire agreement between Customer and Adlib and are intended to be the final and complete understanding of their agreement, superseding all prior or contemporaneous oral or written prior agreements, understandings, negotiations, inducements, course of dealing, communications, conditions, representations, warranties, or agreements relating thereto, both written and oral. No terms, provisions or conditions of any purchase order, invoice or other business form or written authorization used by Customer will have any effect on the rights, duties or obligations of the parties under, or otherwise modify, this Agreement or an Order Form, regardless of any failure of Adlib to object to such terms, provisions or conditions.

16.7 Severability. To the extent that any provision of this Agreement is declared by a court or other lawful authority of competent jurisdiction to be invalid, illegal or unenforceable, such provision shall be severed and deleted or limited so as to give effect to the intent of the Parties insofar as possible, and Customer and Adlib will use their best efforts to substitute a new provision of like economic intent and effect for the illegal, invalid or unenforceable provision, and the remainder of this Agreement shall continue in full force and effect with respect to all other provisions.

16.8 Amendments and Waivers. No modification, amendment, addition to or waiver of any rights, obligations or defaults shall be effective unless in writing and signed by the Parties. The Agreement shall not be amended or modified unless it is mutually agreed in writing. For clarity, Additional Services or Users outside of the original Order Form will require a written amendment or a change order to the Order Form, or a new Order Form. One or more waivers of any right, obligation or default shall be limited to the specific right, obligation or default waived and shall not be construed as a waiver of any subsequent right, obligation or default. No delay or failure of Adlib in exercising any right hereunder and no partial or single exercise thereof shall be deemed of itself to constitute a waiver of such right or any other rights hereunder.

16.9 Notices. Any notice required under this Agreement shall be given in writing and shall be deemed effective upon delivery to the party to whom addressed. All notices shall be sent to the applicable address specified on an Order Form or to such other address as the parties may designate in writing. Unless otherwise specified, all notices to Adlib Publishing Systems, Inc. shall be sent to the attention of the CEO at 215 - 3228 South Service Road Burlington, ON, Canada L7N 3H8. Any notice of material breach shall clearly define the breach including the specific contractual obligation that has allegedly been breached and the date on which Customer became aware of the alleged breach (failure to provide said date shall be considered defective notice).

16.10 Counterparts. This Agreement and any Order Form(s) or SOW(s) may be executed by the Parties in several counterparts, including executed counterparts evidenced by facsimile or electronic copies, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.
SECTION 17. CUSTOMER GENERAL AND IT PROVISIONS

17.1 Licenses: Permits, Etc. Adlib represents and warrants that Adlib has, and shall maintain at all times during the term of this Agreement at its sole cost and expense, all licenses, permits, qualifications, and approvals of any nature that are legally required for Adlib fulfill the terms of this Agreement, including a City Business Operations Tax Certificate and any required certification issued by the California Secretary of State. Customer agrees that the Software is subject to export control laws and regulations of the USA and Canada, and that it shall comply with such regulations, and shall not export or re-export any Software, directly or indirectly in contravention of such laws and regulations.

17.2. Conflicts of Interest. Adlib covenants that, to the best of its knowledge, neither it, nor any officer or principal of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the Customer's interests or that would in any way hinder Adlib's performance under this Agreement. Adlib further covenants that in the performance of this Agreement, no person having any such interest will be employed by it as an officer, employee, agent or subcontractor without the Customer's written consent. Adlib agrees to avoid conflicts of interest or the appearance of any conflicts of interest with the Customer's interests during the performance of this Agreement. If Adlib is or employs a former officer or employee of the Customer, Adlib and any former City officer or employee shall comply with the provisions of Sacramento City Code Section 2.16.090 pertaining to appearances before the City of Sacramento's Council or any Customer's department, board, commission, or committee.

Adlib shall assign only competent personnel to perform on its behalf under this Agreement. To the extent Professional Services are provide on-site, Adlib must notify the Customer in writing of any changes in Adlib's staff assigned to perform a SOW, before any performance by the new staff member. If the Customer, in its sole discretion, determines that any person assigned by the Adlib to perform under a SOW is not performing in accordance with the standards required herein, Customer shall provide notice to Adlib. Adlib shall immediately remove the assigned person upon receipt of the notice.

17.3 Emergency/Declared Disaster Requirements. If an emergency is declared by the Customer's City Manager, or if any portion of the city of Sacramento of the state of California is declared a disaster area by the county, state or federal government, this Agreement may be subjected to increased usage, which may require an updated Order Form to reflect changes in scope or Usage Limitations. As specified in an Order Form, the Adlib shall serve the Customer during a declared emergency or disaster, subject to the same terms and conditions that apply during non-emergency / non-disaster conditions. The pricing set forth in this Agreement will apply, without mark-up, regardless of the circumstances. If the Adlib is unable to fulfill the terms of the Agreement because of a disruption in its chain of supply or service, then the Adlib shall provide proof of the disruption. Acceptable forms of proof will include a letter or notice from the Adlib's source stating the reason for the disruption.

17.4 Funding Availability.

A. This Agreement is subject to the budget and fiscal provisions of the Charter and the Sacramento City Code.

B. The Customer's payment obligation are specified in applicable Order Forms. Customer is responsible for determining the amount of funds appropriated and approved for this Agreement by the Sacramento City Council prior to entering into an Order Form.

C. This Section shall govern over any other contrary provision of the Agreement, Order Form, or any SOW.

D. Adlib shall not be required to provide services that are not specified in an Order Form.

17.5 Equal Employment Opportunity. During the performance of this Agreement, Adlib, for itself, its assignees and successors in interest, agrees as follows:

Compliance With Regulations: Adlib shall comply with all state, local, and federal anti-discrimination
laws and regulations, including the Executive Order 11246 entitled “Equal Opportunity in Federal Employment”, as amended by Executive Order 11375, 12086, and 13672, and as supplemented in Department of Labor regulations (41 CFR Chapter 60), referred to collectively as the “Regulations.”

17.6 Modification of Agreement. The Adlib shall take no direction from any Customer’s employee that changes the executed terms and conditions of the Agreement, or any change that impacts the cost, price, or schedule, before receiving a written, signed modification to the Agreement.

17.7 News Releases. Unless otherwise exempted, news releases, endorsements, advertising and social media content pertaining to this Agreement shall not be made without the prior written consent of the Customer.

17.8 Documentation. Adlib agrees to provide to the Customer, at no charge, all Documentation, and updated versions thereof. “Documentation” means Adlib’s support materials available to all customers of Adlib for the use of the Software at https://help.adlibsoftware.com/support/documentation, as updated. No additional fee shall be charged for Customer’s access to the Documentation.

17.9 Third Party Beneficiaries. The representations, covenants, obligations, rights, and agreements of the parties set forth in this Agreement are not intended for, nor shall they be for the benefit of or enforceable by, any third party or person not a party to this Agreement including, without limitation Customers end user, suppliers, and/or customers. Under this Agreement, Adlib shall have no relationship with the customers to which Customer may provide service. Customer further acknowledges and agrees that no fiduciary relationship arises with Adlib under this Agreement.

17.10 Data Security.

17.10.1 Protection of Customer’s Information. Adlib will use commercially reasonable administrative, physical, and technical efforts to protect the security, confidentiality, and integrity of Customer’s Information. At a minimum, Adlib shall not store, copy, analyze, monitor, or otherwise use Customer’s Information except for the purposes of providing the Services to Customer. Adlib shall comply fully with all applicable laws, regulations, and government orders relating to personally identifiable information (“PII”) and data privacy with respect to any such data that Adlib receives or has access to under this or in connection with the performance of the Services for Customer. Adlib shall otherwise protect PII and will not use, disclose, or transfer across borders such PII except as necessary to perform the Services under this Agreement or in accordance with applicable law. To the extent that Adlib receives PII related to the performance of this Agreement, Adlib shall protect the privacy and legal rights of the Customer, its personnel, clients, customers, contractors, residents, and visitors. All Customer’s information stored or at rest in the Adlib’s data centers, or in transport, will be encrypted in transport and will not be transferred to any other hosting entity or location without the prior written consent of Customer. In the event of a security breach involving Customer’s Information, Adlib shall give notice to city in accordance with applicable law. “Security breach” for purposes of this section will refer to an event that compromises the confidentiality, integrity, or availability of Customer’s Information or PII or allows unencrypted Customer’s Information or PII to be acquired by an unauthorized person. Once a security breach has been contained, Adlib must provide Customer with a post-incident report documenting all containment, eradication, and recovery measures taken. Customer reserves the right in its sole discretion to enlist a third party to audit Adlib’s findings and produce an independent report, and Adlib will fully cooperate with the third party. Adlib will also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

17.10.2 Notification. In the event of a Security breach, Adlib shall notify the person whose PII has been compromised. The notification shall comply with the notification requirements of California Civil Code sections 1798.29.

17.11 Return of Customer’s Information. Upon termination an Order Form, Adlib shall promptly return or delete all Customer Data in its possession as directed by Customer in writing at no cost to the
Customer. Notwithstanding the foregoing, Customer may elect to download the Customer's Information at any time during a Subscription Term.

17.12 Safety and Accident Prevention. In performing the Services on a Customer site, Adlib shall conform to any specific safety requirements contained in the Agreement or as required by law or regulation. Adlib shall take any additional precautions as Customer may reasonably require for safety and accident prevention purposes.

[End of Agreement.]
CITY OF SACRAMENTO  
A Municipal Corporation

By: ___________________________________________

Print name: ____________________________________

Title: __________________________________________

By: ___________________________________________

Print name: ____________________________________

Title: __________________________________________

For: Howard Chan, City Manager

CONTRACTOR

Adlib Publishing System, Inc.

NAME OF FIRM

By: Tiffany Chen [Jun 5, 2024 12:00 EDT]

Print name: Tiffany Chen

Title: CFO

APPROVED AS TO FORM:

[Signature]

Title: Sr. Dep. City Attorney

ATTEST:

____________________________________________

City Clerk

Form Approved by City Attorney 2-14-2017
AGREEMENT FOR
ACCESS TO SACRAMENTO COUNTY
CLETS/CJIS APPLICATIONS

THIS AGREEMENT is made and entered into as of this 1st day of July 2024, by and between the
COUNTY OF SACRAMENTO, a political subdivision of the State of California, hereinafter referred to as
DTECH or COUNTY, and the City of Sacramento Police Department, herein referred to as AGENCY.

RECITALS

WHEREAS, the COUNTY maintains California Law Enforcement Telecommunications Systems
(CLETS) and Sacramento County Criminal Justice Information System (CJIS) in conjunction with the
Federal Bureau of Investigation (FBI/National Crime Information Center - NCIC) and the Department of
Motor Vehicles (DMV);

WHEREAS, the COUNTY is willing to provide specified users from the AGENCY with access to these
confidential data bases, subject to authorization by the California Department of Justice and the
Sacramento County Sheriff’s Department;

WHEREAS, the AGENCY is willing to reimburse the COUNTY for appropriate costs to maintain and
access this information;

WHEREAS, COUNTY and AGENCY desire to enter into this Agreement on the terms and conditions
set forth herein;

WHEREAS, County Board of Supervisors SCC Ordinance 2.61.019 authorizes the County Chief
Information Officer to execute and administer contracts with other government agencies to recover
costs for providing access to County computer applications and information technology services.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, COUNTY and
AGENCY agree as follows:

1. SCOPE OF SERVICES
   a. DTECH shall provide access to the COUNTY’s suite of CJIS applications, including the CLETS
      portal through a secured point to point TCP/IP connection.
   b. COUNTY shall render assistance to AGENCY in order to provide for timely, efficient, and
      accurate implementation to access the CLETS/CJIS information.
   c. Access to this information is limited to authorized CLETS users only. Any unauthorized users of
      equipment providing access to the CLETS/CJIS data bases may result in an immediate
      termination of services for all AGENCY users.
   d. The AGENCY will be responsible for all AGENCY equipment and maintaining the necessary
      secured point to point TCP/IP connections for their users.

2. TERM OF AGREEMENT

   This agreement shall be effective commencing July 1, 2024, and shall terminate on June 30,
   2025.
3. COMPENSATION/PRICE CEILING

The AGENCY shall pay COUNTY the following monthly fees:

- CJIS Data Access Fee $1,160.00
- County Extranet Portal Fee 570 devices @ $52.00 each $29,640.00
- Additional WebKPF service option 1,369 users @ $1.00 each $1,369.00
- Technical/Administrative Support Fee 3 hours @ $150.00 each $450.00

CJIS TOTAL $32,619.00

Total amount authorized under this Agreement (12 months) $391,428.00

Jail Inmate Management System (JIMS)
- CPU Usage Fee $220.00

JIMS TOTAL $220.00

Total amount authorized under this Agreement (12 months) $2,640.00

FY 2024-25 GRAND TOTAL $394,068.00

Fees shall be recalculated on an annual basis and do not include any special programming, training, or support requested by the Agency.

4. INVOICES

a. COUNTY shall submit to AGENCY itemized invoices on an annual interval.

b. AGENCY agrees to reimburse COUNTY upon receipt of an itemized invoice, for all services supplied by COUNTY under the terms of this Agreement.

c. COUNTY shall send all invoices to:

   A/P Processing Center
   City of Sacramento
   915 I Street Fl. 4
   Sacramento, CA 95814-2608

5. AVAILABILITY & ENHANCEMENTS

AGENCY understands that COUNTY makes every effort to maximize the availability of the CLETS/CJIS application but that from time to time the COUNTY may take the application down for a period of time for maintenance or improvements. Scheduled downtime will be communicated via the COUNTY CLETS/CJIS message system or via electronic mail.

AGENCY understands that the COUNTY shall have the right to restrict access to its users if there is a significant decline in system performance due to current workloads.

AGENCY understands that any AGENCY-requested application enhancements will be made at the sole discretion of the COUNTY and may require additional compensation for development...
and/or support time. The AGENCY will receive and must agree to a firm hourly estimate and scheduled completion date for the enhancement prior to COUNTY performing the requested work.

6. MEMORANDUM OF UNDERSTANDING

The attached MEMORANDUM OF UNDERSTANDING (Attachment A) is an integral part of this agreement, and full compliance by the AGENCY of this memorandum is required. Failure to abide by this memorandum may result in the immediate termination of CLETS/CJIS privileges for all of the AGENCY’S users.

7. SERVICE DESK

COUNTY will provide reasonable assistance for using the CLETS/CJIS system. Assistance will be available through COUNTY’s Service Desk at 916-874-5555 during the hours of 7:00 AM to 6:00 PM, Monday through Friday. COUNTY will provide “best available” service outside of the normal Service Desk hours. The AGENCY shall call the Service Desk and alert them of any problems it is having with this program. The AGENCY is responsible for maintaining its own equipment as well as for keeping it free from any viruses and all problems emanating from the hardware, software or configuration.

8. COMPLIANCE WITH LAWS

AGENCY and COUNTY shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances.

9. GOVERNING LAWS AND JURISDICTION

This Agreement shall be deemed to have been executed and to be performed within the State of California and shall be construed and governed by the internal laws of the State of California. Any legal proceedings arising out of or relating to this Agreement shall be brought in Sacramento County, California.

10. CONFLICT OF INTEREST

AGENCY’s officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property or source of income that could be financially affected by or otherwise conflict in any manner or degree with the performance of services required under this Agreement.

11. NON-DISCRIMINATION IN EMPLOYMENT, SERVICES AND FACILITIES

   a. AGENCY agrees and assures COUNTY that AGENCY and any subcontractors shall comply with all applicable federal, state, and local anti-discrimination laws, regulations, and ordinances and to not unlawfully discriminate, harass, or allow harassment against any employee, applicant for employment, employee or agent of COUNTY, or recipient of services contemplated to be provided or provided under this Agreement, because of race, ancestry, marital status, color, religious creed, political belief, national origin, ethnic group identification, sex, sexual orientation, age (over 40), medical condition (including HIV and AIDS), or physical or mental disability. AGENCY shall ensure that the evaluation and treatment of its employees and applicants for employment, the treatment of COUNTY employees and agents, and recipients of services are free from such discrimination and harassment.
b. AGENCY represents that it is in compliance with and agrees that it will continue to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 et seq.), the Fair Employment and Housing Act (Government Code §§ 12900 et seq.), and regulations and guidelines issued pursuant thereto.

c. AGENCY agrees to compile data, maintain records and submit reports to permit effective enforcement of all applicable antidiscrimination laws and this provision.

d. AGENCY shall include this nondiscrimination provision in all subcontracts related to this Agreement.

12. SECURITY

a. AGENCY shall appoint a security and privacy officer who shall be responsible for all security and privacy considerations relating to the use of the AGENCY terminal or terminals. This Security Officer shall be the liaison point to COUNTY regarding security and privacy matters.

b. All requests to increase the number of terminals or users in an existing AGENCY shall be authorized in advance by COUNTY.

c. AGENCY shall limit access to information furnished by COUNTY as defined in the Scope of Services, above.

d. The use of the CLETS/CJIS data and the configuration of the equipment used for CLETS/CJIS connection by the AGENCY may be continuously monitored by COUNTY, who shall have the right to make periodic on-site inspections of the AGENCY to ensure compliance with the CLETS/CJIS policies and procedures.

13. MUTUAL HOLD HARMLESS

AGENCY shall defend and indemnify COUNTY and shall be responsible for damages caused by the acts or omissions of AGENCY'S officers, employees and agents occurring in the performance of this Agreement. COUNTY shall defend and indemnify AGENCY and shall be responsible for damages caused by the acts or omissions of COUNTY'S officers, employees and agents occurring in the performance of this Agreement. It is the intention of COUNTY and AGENCY that the provisions of this paragraph be interpreted to impose on each party, responsibility for the acts of their respective officers, employees and agents. It is also the intention of COUNTY and AGENCY that, where comparative negligence is determined to have been contributory, principles of comparative negligence will be followed and each party will bear the proportionate cost of any damage attributable to the negligence of that party, its officers, employees and agents.

Each party to this Agreement agrees to provide the other party written notification within thirty (30) days of receipt of any claim or lawsuit arising from this Agreement.

14. DATA DISCLAIMER

COUNTY makes no representations about the suitability of the information that will be accessed by using the CLETS/CJIS applications, for any purpose. All such data and related graphics are provided "as is" without warranty of any kind. In no event shall COUNTY be liable for any special, indirect or consequential damages or any damages whatsoever resulting from the use of the CLETS/CJIS system.
The data and related graphics made accessible by the CLETS/CJIS applications could include technical inaccuracies or typographical errors. Changes are periodically made to the information herein by the appropriate law enforcement agency. Furthermore, COUNTY and/or its respective suppliers may make improvements and/or changes in the product(s) and/or the service(s) described herein at any time.

15. TERMINATION

a. Either party may terminate this Agreement at any time by giving sixty (60) days written notice to the other party, whether or not such other party is in default.

b. Upon such termination, AGENCY agrees to immediately discontinue use of everything provided or controlled by COUNTY under this Agreement.

c. No alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not specifically incorporated herein, shall be binding on any of the parties hereto.

16. RECORD RETENTION

COUNTY shall maintain appropriate financial records that reflect costs of services provided under this Agreement, and AGENCY shall have reasonable access to COUNTY’s financial records for purpose of audit. Such records shall be retained and available for audit purposes for three years from the end of the contract term.

17. GENERAL CONDITIONS

This Agreement is conditional upon the appropriation and availability of funds for purposes of this Agreement. In the event that such funds are not available in the Budget Acts for the fiscal year concerned or are insufficient to carry out the purpose of this Agreement, each party agrees to release the other party from all obligations.

18. NOTICE

Any notice, demand, request, consent, or approval that either party hereto may or is required to give the other pursuant to this Agreement shall be in writing and shall be either personally delivered or sent by mail, addressed as follows:

TO COUNTY: TO AGENCY:

Shaina Dy Demetri Ojeda
Admin. Services Officer II IT Manager
799 G Street Public Safety Information Technology
Sacramento, CA 95814-1212 5770 Freeport Boulevard, #100
Sacramento, CA 95822

Phone: (916) 875-1141 Phone: 906-808-0423
Email: dysha@saccounty.gov Email: dojeda@pd.cityofsacramento.org
Either party may change the address to which subsequent notice and/or other communications can be sent by giving written notice designating a change of address to the other party, which shall be effective upon receipt.

19. INTERPRETATION

This Agreement shall be deemed to have been prepared equally by both of the parties, and the Agreement and its individual provisions shall not be construed or interpreted more favorably for one party on the basis that the other party prepared it.

20. ENTIRE AGREEMENT

This Agreement constitutes the entire contract between COUNTY and AGENCY regarding the subject matter of this Agreement. Any prior agreements, whether oral or written, between COUNTY and AGENCY regarding the subject matter of this Agreement are hereby terminated effective immediately upon full execution of this Agreement.

IN WITNESS HEREOF, the parties have executed this Agreement the date and year first written above.

COUNTY OF SACRAMENTO: FOR AGENCY:

By: ________________________________
Tricia Cosker
Chief Departmental Admin Services

By: ________________________________
Mario Lara
Assistant City Manager

City of Sacramento, Approval As To Form:

______________________________
Senior Deputy City Attorney

City of Sacramento, Attest:

______________________________
ATTACHMENT A

SACRAMENTO COUNTY CRIMINAL JUSTICE INFORMATION SYSTEM

MEMORANDUM OF UNDERSTANDING

1. PURPOSE. The purpose of this memorandum is to state the conditions pursuant to which the governmental entity identified as the User Agency may participate in the Sacramento County Criminal Justice Information System, hereinafter, referred to as the CJIS.

2. CJIS OPERATIONS. The CJIS provides for the storing and exchange of information including, but not limited to, warrants of arrest and local criminal offender record information. The CJIS shall be the control terminal to facilitate the interchange of computerized record information through CLET/NLETS and the User Agency. The CJIS will also provide a centralized switching service to store and forward messages between the User Agency and all other User Agency terminal within the CJIS.

3. CONDITIONS OF USER AGENCY PARTICIPATION. The conditions, which shall govern the User Agency’s participation in the CJIS, shall be set forth in the following sections.

4. RESPONSIBILITY FOR CJIS PERFORMANCE. The User Agency understands that the CJIS is a user of the entire Sacramento County computer system operated by the Sacramento County Office of Communications and Information Technology (OCIT). An important objective of Sacramento County is to operate the computer systems with maximum efficiency. However, Sacramento County shall not be held responsible for any defect in the CJIS services or performance, irrespective of its nature or its cause.

5. PROCEDURES. The User Agency shall conform with policies and procedures set forth in the CJIS manual, and in particular shall comply with the provisions thereof which require a User Agency to allocate sufficient time and funds to train all User Agency employees using the CJIS.

6. TIMELY DATA ENTRY. The User Agency, if performing data entry functions into the CJIS, shall perform such data entry in a timely and accurate manner.

7. STATUTORY REQUIREMENTS. The User Agency shall utilize the information obtained from the CJIS for official purposes only and shall comply with federal and state statutes applicable to the dissemination of criminal offender record information. See U.S. Code Title 28, Chapter I, Part 20 and California Penal Code sections commencing with section 11105 and 13320.
8. SUSPENSION OF SERVICES. At the discretion of the CJIS Security Council, participation in the CJIS by the User Agency may be suspended for the purpose of protecting the integrity and efficiency of the CJIS. Appropriate reasons for such suspension include, but are no limited to, failure by the User Agency to comply with: the provisions of this memorandum; any rule, policy or procedure adopted by the CJIS for the CJIS operation; or any state or federal law relating to the security and privacy of the CJIS information. Any such suspension may terminate based on satisfactory assurance that the apparent problem has been corrected.

9. ADDITIONAL EQUIPMENT. The User Agency shall not add equipment to the CJIS without the approval of the CJIS Security Council prior to installation. The User Agency shall submit any application for additional equipment to the CJIS Security Council for review and approval.

10. MONITORING OF USER AGENCY. The use of the CJIS and the configuration of the equipment used for CJIS by the User Agency may be continuously monitored by the CJIS Security Council who shall have the right to make periodic on-site inspections of the User Agency to insure compliance with the CJIS policies and procedures.
City of Sacramento

EnergyCAP Subscription Agreement

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EnergyCAP, LLC

360 Discovery Drive
Boalsburg, PA 16827
T: 877-327-3702
F: 719-623-0577
EnergyCAP® Subscription Agreement

This Subscription Agreement (this “Agreement”), dated as of ______________ (“Effective Date”), is by and between EnergyCAP, LLC, a Delaware limited liability company (“ENC”), and the City of Sacramento, a municipal corporation, (“Licensee” or “City”) for use of the Subscription Services (as defined below). ENC and Licensee are referred to individually as a “Party” and collectively as the “Parties.”

In consideration of the mutual covenants and agreements set forth herein, the Parties agree as follows:

1. DEFINITIONS.

1.1. “Applicable Law” means any statute, ordinance, judicial decision, executive order, directive, or regulation having the force and effect of law in each case to the extent applicable to a Party, the Services or, in connection with this Agreement.

1.2. “Defect” has the meaning assigned in Section 6.1.2 below.

1.3. “Documentation” means any explanatory materials, such as user manuals, training manuals, specifications regarding the implementation and use of the Subscription Services (electronic or written) that is provided by ENC regarding the Subscription Services, as may be updated from time to time.

1.4. “Fees” means any fees due for the Subscription Services set forth on the applicable Order.

1.5. “Force Majeure Event” means any event or circumstance that is beyond the control of an affected Party and that prevents the performance of any of the affected Party’s obligations under this Agreement or prevents Licensee from using the benefits of the Subscription Services including acts of God, acts of war, riots, acts of terror and other acts or omissions of third parties such as interruptions, delays, or malfunctions of service by third-party service providers; provided, however, “Force Majeure Event” expressly excludes any event that ENC could reasonably have prevented by testing, reasonable work around, other exercise of diligence or the use of technology common and prevalent in the industry.

1.6. “Initial Term” has the meaning assigned in Section 3.1.

1.7. “Licensee Data” means all data uploaded into the Subscriptions Services or otherwise provided to ENC for purposes of providing the Subscription Services.

1.8. “Malicious Code” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents, or programs.

1.9. “Order” means any mutually agreed document referencing this Agreement that defines the specific Subscription Services purchased by Licensee pursuant to this Agreement.

1.10. “Professional Services” means the consulting, development, implementation, training, and other services described in a mutually agreed statement of work (each, a “SOW”) executed by the Parties.

1.11. “Renewal Term” has the meaning assigned in Section 3.1.

1.12. “Subscription Services” means the online, web-based applications and platform provided by ENC as specifically described on the applicable Order.

1.13. “Support Services” means the services described in Section 6 below.

1.14. “Term” means the Initial Term and each Renewal Term, collectively.

1.15. "Users" means individuals who are authorized by Licensee to use the Subscription Services and who have been supplied user identifications and passwords by Licensee (or by ENC at Licensee’s request). Users may include Licensee’s employees, consultants, contractors, and agents.

2. LICENSE GRANT; RESTRICTIONS.

2.1. During the Term, ENC hereby grants Licensee a right to access and use the Subscription Services in accordance with the Documentation, this Agreement and the limitations set forth in the applicable Order.

2.1.1. Licensee may authorize its Users to access and use the Subscription Services. Licensee is responsible for (i) the confidentiality of all usernames and passwords and all activities that occur under such usernames; and (ii) each User’s compliance with the terms of this Agreement. Licensee shall promptly notify ENC of any suspected unauthorized access to the Subscription Services at
2.1.2. Licensee may (i) include its company name or logo in the Subscription Services interface and reports; and/or (ii) create its own branded login screen; however, the EnergyCAP logo and other identifiable EnergyCAP content may be present throughout the application and in help content.

2.1.3. Licensee is responsible for the telecommunications, broadband and computer equipment and services needed to access and use Subscription Services.

2.2. Licensee will not (i) alter, modify, or adapt the Subscription Services or Documentation, in whole or in part, in any way; (ii) disassemble, decompile, reverse engineer, translate or create derivative works of the Subscription Services; or (iii) transfer, distribute, rent, sub-license, or lease the Subscription Services or the Documentation; (iv) use any external program to alter, edit or append records to the data files without using ENC-provided external tools and interfaces; (v) remove, alter or obscure any product identification, copyright or proprietary notices; (vi) upload or provide any information or materials that are defamatory, offensive, abusive, obscene, of menacing character, or that violate any third party’s privacy or intellectual property rights; (vii) use the Subscription Services to threaten, defame, bully, harass, or harm persons or their property; (viii) send, store or distribute any Malicious Code with the intent or effect of damaging, destroying, disrupting, monitoring or otherwise impairing ENC’s or any third party’s network, computer system, or other equipment, or any third party data contained therein; or (ix) access the Subscription Services or use the Documentation in order to build a similar or competitive product.

3. TERM.

3.1. All Subscription Services will be provided beginning on the effective date of the applicable Order (the “Order Effective Date”) and continuing an initial term of five (5) years as identified on the applicable Order (the “Initial Term”) unless earlier terminated in accordance with this Agreement. Upon completion of the Initial Term, the term for all Subscription Services will automatically renew for successive five (5) year renewal terms (each, a “Renewal Term”) unless a different renewal period is specified on the applicable Order. Each Party must provide at least thirty (30) days’ written notice if they intend for the Subscription Services to expire at the end of the Initial Term or the then-current Renewal Term. The Fees payable during any Renewal Term will be increased by five percent (5%) (unless the pricing in such prior Term was designated in the applicable Order as promotional or one-time) over the Fees paid during the prior Term and will be further adjusted to account for any increase in the scope of the Subscription Services. In the event that any prior term was designated in the applicable Order as promotional or one-time, ENC shall provide 30-days notice for any price increases in a renewal term unless otherwise stated in the applicable Order.

3.2. ENC may not terminate this agreement prior to start of an applicable Renewal Term for the purpose of issuing a new or similar Agreement for the same or similar services with the purpose of increasing Fees beyond limits set forth in Section 3.1.

3.3. A Party may terminate this Agreement and/or any then current Order for cause: (i) upon thirty (30) days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period or such longer period as may be mutually agreed in writing; or (ii) immediately if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

3.4. ENC may terminate this Agreement and/or any then current Order if Licensee fails to remit payment within ten (10) days after written notice from ENC with respect to any unpaid invoice.

3.5. Upon any termination for cause by Licensee, ENC shall refund any prepaid Fees covering the remainder of the then current Term. Upon any termination for cause by ENC, Licensee shall pay all Fees due and to become due during the Term of any then current Order(s). In no event shall any termination relieve Licensee of its obligation to pay any Fees due for Services provided prior to the effective date of termination.

3.6. During the period of ten (10) days after the effective date of termination of the applicable Order, Licensee may retrieve Licensee Data via existing reports, out-of-the-box export capabilities or from screen captures. After such 10-day period, ENC shall have no obligation to provide any Licensee Data to Licensee or otherwise maintain the Licensee Data and may thereafter, unless legally prohibited, delete all Licensee Data in its systems or otherwise in ENC’s possession or under ENC’s control.

3.7. ENC may suspend Licensee’s access to or use of any of the Subscription Services without notice if ENC reasonably believes that such suspension is necessary to preserve the security, integrity, or accessibility
of the Subscription Services or in the event of delinquent payment by Licensee. In the event that access to the Subscription Services is suspended for delinquent payment by Licensee, Fees for such Subscription Services will still be applicable during the suspension period.

3.8. Surviving Provisions. Section 3.4, Section 3.6, Section 4.2, Sections 7 through 11 and Section 14 shall survive any termination or expiration of this Agreement.

4. WARRANTIES; DISCLAIMERS.

4.1. ENC warrants that during the Term the Subscription Services will perform materially in accordance with the Documentation and the functionality of the Subscription Services will not be materially decreased. In the event of any breach of the foregoing warranty, ENC will use commercially reasonable efforts to correct the reported non-conformity and/or breach, at no charge to Licensee, or if ENC is unable to do so within a reasonable period, not to exceed thirty (30) days, Licensee may terminate the applicable Order, and Licensee will receive a pro-rata refund of any uneasured Fees, based on the date Licensee reported the non-conformance, that Licensee has pre-paid for the Subscription Services.

4.2. Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THESE TERMS, THE SUBSCRIPTION SERVICES ARE PROVIDED AS IS, WITHOUT WARRANTY OF ANY KIND. ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED. SUPPLIER DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICES WILL RUN WITHOUT ERROR OR BE PROBLEM-FREE.

5. HOSTING SERVICES; SECURITY; PROFESSIONAL SERVICES.

5.1. ENC will make the Subscription Services available 99% of the time determined on a quarterly basis during the Term except for: (a) planned downtime (of which ENC will provide at least 8 hours’ prior notice which notice will be provided via the Subscription Services and be scheduled to the extent practicable during the weekend hours from 6:00 p.m. Eastern time Friday to 6:00 a.m. Eastern time Monday), or (b) any unavailability caused by a Force Majeure Event.

5.2. ENC will implement and maintain administrative, physical, and technical safeguards designed to ensure that the Subscription Services meet then-current and relevant industry standards relating to the privacy, security, confidentiality, integrity, and availability of Licensee Data, including by maintaining a written information security program that includes applicable policies, procedures, training, and technology controls designed to protect Licensee Data from unauthorized access, use, disclosure, alteration, or destruction. ENC will only use and/or process Licensee Data in accordance with this Agreement and for purposes of providing the Services.

5.3. ENC will promptly (and in any event within forty-eight (48) hours) notify Licensee in the event of the occurrence of any unauthorized access to Licensee Data (a “Data Privacy Breach”). ENC will provide as many details as known at that time (and regularly update Licensee thereafter in writing or by email followed by a written notification) setting out in reasonable detail, without limitation, the nature of the information compromised, threatened, or potentially compromised, the specific information compromised or potentially compromised and of all events which may adversely affect ENC’s ability to provide the Subscription Services. ENC further agrees to provide reasonable assistance and cooperation requested by Licensee in the furthearance of any correction, remediation, or investigation of any Data Privacy Breach.

5.4. ENC grants to Licensee a limited, nonexclusive, nontransferable, non-sublicenseable, worldwide, license during the Subscription Term to use and make calls to the API to develop, implement and distribute Licensee-owned applications solely for use by Licensee and its End Users in connection with the Subscription Services. ENC may modify, amend, change, or deprecate all or part of any API in its reasonable discretion at any time (an “API Modification”). ENC shall use commercially reasonable efforts to notify Licensee of any such actions as soon as reasonably practical. Licensee shall, within thirty (30) days from the date of first notice of any API Modification(s) (or such shorter period of time specified in the notice of the API Modification(s)) (the “Conformance Period”) comply with such modification(s) by (i) implementing and using the most current version of the API, (ii) making any changes to Licensee’s application using the API that may be required as a result of such API Modification, (iii) using commercially reasonable efforts to stop distribution of all prior versions of Licensee applications using the API and (iv) using commercially reasonable efforts to upgrade all prior versions of Licensee’s applications using the API then in use to the most recent version. Licensee acknowledges that an API Modification may have a material adverse effect on Licensee’s applications using the API, including causing such applications to
not operate as designed. ENC shall have no liability of any kind to Licensee or any User with respect to such API Modifications or any adverse effects resulting from the use or failure to use such API Modifications. ENC reserves the right to monitor and enforce, within reason, rate-limiting and throttling of API calls.

5.5. ENC will provide Professional Services in accordance with the terms set forth on Exhibit 1 to this Agreement.

6. SUPPORT SERVICES.

6.1. During the Term:

6.1.1. ENC will provide (i) all enhancements and updates to the Subscription Services that are not separately marketed by ENC and are made available by ENC to its customers generally during the Term to Licensee. ENC will use reasonable efforts to notify Licensee at least two weeks in advance of all major enhancements which require planned downtime. Release notes will be provided and made available to Licensee at the same time and in the same format as ENC provides to its customers generally.; (ii) Support Services for the Subscription Services such that the Subscription Services perform substantially in accordance with Documentation.

6.1.2. ENC will use commercially reasonable efforts to correct or replace Subscription Service and/or provide Support Services to remedy any failure of the Subscription Services to perform substantially in accordance with Documentation (a “Defect”). SUCH CORRECTION, REPLACEMENT, OR SUPPORT SERVICES SHALL BE LICENSEE’S SOLE AND EXCLUSIVE REMEDY, AND ENC SHALL HAVE NO OTHER LIABILITY, FOR DEFECTS.

6.1.3. In the event (i) any Defect is determined by ENC to be attributable to Licensee’s acts or omissions or to Licensee’s software, hardware, modifications, or system changes, or (ii) Licensee requests assistance in connection with additional training, correction of database errors and/or data conversion, ENC shall provide a quotation to Licensee for additional Professional Services at its then current rates for the Professional Services.

6.1.4. Technical support will be provided during regular business hours defined as 8:00 AM-5:00 PM ET Monday through Friday except federal holidays. Licensee may receive support via the toll-free support hotline at 877-327-3702 or by submitting a support ticket at https://Helpcenter.EnergyCAP.com.

6.1.5. Licensee may call or submit support tickets via the online support ticketing system only to report a Defect, but not a “how do I?” operating or training question.

6.1.6. After-Hours Support is available via the support ticket system and online help manuals accessible from within the Subscription Services.

6.1.7. ENC will use reasonable efforts to respond to all support requests in accordance with the times set forth in the table below. Support requests are prioritized by Licensee at time of submission into one of three categories, and ENC will make a reasonable effort to resolve the request within the specified time:

<table>
<thead>
<tr>
<th>Service Level</th>
<th>Response</th>
<th>Resolution</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Emergency</td>
<td>1 business hour</td>
<td>1 business day</td>
<td>The Subscription Services is offline or unavailable, data has been corrupted or lost and must be restored from a backup, and/or a business-critical feature/function is not available.</td>
</tr>
<tr>
<td>Urgent</td>
<td>2 business hours</td>
<td>2 business days</td>
<td>Important features of the Subscription Services are unavailable with no acceptable workaround; however, operations can continue in a restricted fashion.</td>
</tr>
<tr>
<td>Routine</td>
<td>8 business hours</td>
<td>5 business days</td>
<td>Inquiry regarding a routine technical issue; information requested on application capabilities, navigation, installation, or configuration; bug affecting a small number of users. Acceptable workaround available.</td>
</tr>
</tbody>
</table>

©2023 EnergyCAP, LLC
6.2. Licensee is responsible for (a) any services relating to software or hardware not provided by ENC, including, without limitation, any programming performed by Licensee; (b) training of current or new Licensee employees (technical support requests may not be used as a substitute for software training); and (c) correction of user errors and database errors; (d) supporting software and hardware such as operating systems, browsers, and client workstations.

6.3. Support Services include support for all ENC developed interfaces, reformatters, custom reports, and other deliverables as part of the applicable Order for purposes of ensuring that all custom-developed ENC deliverables function as documented after upgrades are released. Except as set forth in this clause, Support Services do not include revisions to deliverables. If revisions are requested, then ENC shall provide a quotation to Licensee for Professional Services at ENC’s then-current rates for such services.

7. FEES, PAYMENT TERMS.

7.1. ENC agrees to invoice Licensee and Licensee shall pay for the Subscription Services in accordance with the terms set forth in the applicable Order. Payment is due within 30 days from the date of the applicable invoice unless otherwise set forth in the applicable Order.

7.2. Licensee shall be responsible for all taxes imposed by any governmental agency with respect to the Subscription Services and related services rendered by ENC other than taxes based on ENC’s income or property.

7.3. If any undisputed amount owed hereunder is more than 30 days past due, and ENC promptly provided written notice of the amount past due, ENC may impose a late payment fee not exceeding the lesser of 1% per month and the maximum amount permitted by law on the undisputed amount past due.

8. PROPRIETARY RIGHTS.

8.1. Reservation of Rights. The Subscription Services and the Documentation, and any and all enhancements, modifications, improvements or derivative works thereto, whether or not created or developed in conjunction with Licensee (collectively, the “Enhancements”) are and will remain the sole and exclusive property of ENC. Except for the rights granted pursuant to this Agreement, ENC retains all copyrights, patents, trade secrets, trademarks, and all other intellectual property interests in and to the Subscription Services and the Enhancements.

8.2. Licensee Data. As between Licensee and ENC, Licensee exclusively owns all rights, title and interest in and to all of Licensee Data and is solely responsible for the accuracy, quality, integrity and legality of Licensee Data and of the means by which Licensee acquired the Licensee Data. Licensee grants ENC and its third-party providers a non-exclusive, worldwide, royalty-free and fully paid license to use the Licensee Data solely as necessary to perform the Subscription Services.

8.3. Feedback. The parties acknowledge that the Subscription Services may collect and aggregate certain de-identified information and data regarding the use and operation of the Subscription Services by Licensee. Licensee agrees that ENC may utilize such information and data as well as any Licensee suggestions, enhancement requests or other recommendations (collectively, “Feedback”) for any lawful business purpose, without a duty of accounting to Licensee so long as such Feedback does not identify Licensee or Licensee Data. No compensation shall be paid with respect to ENC’s use of Feedback.

8.4. Licensee grants ENC a non-exclusive, royalty-free license to Use De-identified Licensee data in business intelligence initiatives. “De-identified” means data that is not attributable to or identifiable as specific buildings, utility accounts, utility meters or premise addresses in a manner that could allow an observer to identify the point of service. “Use” means analysis for purposes of creating and displaying useful data-based cross-licensee products and tools, industry and regional key performance indicators (KPIs), benchmarks, and statistical results such as averages and means, for distribution to and the benefit of ENC customers generally. De-identified data and analyses may be shared with third parties such as consultants, vendors, educational and public entities.

9. CONFIDENTIAL INFORMATION.

9.1. Definition of Confidential Information. “Confidential Information” is any document or other media or tangible items that relates to research, development, trade secrets, clients, business affairs or that contains any other information of a Party that was not generally available to the public when received by the other Party. “Confidential Information” includes Licensee’s technology, Licensee’s utility billing and rate information,
ENC’s technology, and the terms and conditions of this Agreement. “Confidential Information” does not include information that: (i) is known to the receiving Party prior to receipt from the disclosing Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (ii) becomes known (independently of disclosure by the disclosing Party) to the receiving Party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the receiving Party; or (iv) is independently developed by the receiving Party.

9.2. Protection of Confidential Information. Each Party acknowledges that it will or may have access to Confidential Information of the other Party and therefore each Party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to that Party’s attorneys, accountants and other advisors as reasonably necessary and providing that they agree to be bound by obligations of confidentiality at least as strict as those contained herein), nor permit any of its partners, shareholders, directors, officers, employees, agents or contracting parties to use or disclose, any of the other Party’s Confidential Information and will take precautions necessary to protect the confidentiality of such Confidential Information using the same degree of care used to protect its own Confidential Information, but in any case using no less than a reasonable degree of care.

9.3. Compelled Disclosure. The receiving Party may disclose Confidential Information pursuant to the requirements of a governmental agency or as required by law, provided that it gives the disclosing Party reasonable prior written notice sufficient to permit the disclosing Party to contest such disclosure. If the disclosing Party is not successful in precluding the requesting legal body from requiring disclosure of the Confidential Information, the receiving Party shall furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded with the Confidential Information.

9.4. Ownership of Confidential Information. All Confidential Information disclosed pursuant to this Agreement (including information in computer software or held in electronic storage media) shall be and remain the property of the disclosing Party. All such information in tangible form shall be returned to the disclosing Party promptly upon written request or the termination or expiration of this Agreement and shall not thereafter be retained in any form by the receiving Party, its Affiliates, or any employees or independent contractors of the receiving Party or its Affiliates.

9.5. Survival. SECTION 9 SHALL REMAIN IN FULL FORCE AND EFFECT FOR SO LONG AS EITHER PARTY RETAINS ANY CONFIDENTIAL INFORMATION OF THE OTHER PARTY.

9.6. Data Protection. Protection of CITY Information. ENC will use commercially reasonable administrative, physical, and technical efforts designed to protect the security, confidentiality and integrity of CITY Information. At a minimum, ENC shall not store, copy, analyze, monitor, or otherwise use CITY Information except for the purposes of providing the Services to CITY. Each of the City and ENC shall comply fully with all applicable laws, regulations, and government orders relating to personally identifiable information (“PII”) and data privacy with respect to any such data that ENC receives or has access to under this Contract or in connection with the performance of the Services for CITY. ENC shall otherwise protect PII and will not use, disclose, or transfer such PII except as necessary to perform the Services under this Contract or in accordance with applicable law. All CITY Information stored or at rest in the ENC’s data centers, or in transport, will be encrypted in transport and will not be transferred to any other hosting entity or location without the prior written consent of CITY. In the event of a security breach involving CITY Information, ENC shall give notice to City in accordance with applicable law. “Security breach” for purposes of this section will refer to an event that compromises the confidentiality, integrity, or availability of CITY Information or PII or allows unencrypted CITY Information or PII to be acquired by an unauthorized person. Once a security breach has been contained ENC must provide CITY with a post-incident report documenting all containment, eradication, and recovery measures taken. CITY reserves the right in its sole discretion to enlist a third party to audit ENC’s findings and produce an independent report, and ENC will fully cooperate with the third party. ENC will, to the extent applicable to the Services, also comply with all HIPAA requirements and any other state and federal rules and regulations regarding security of information.

Notification. In the event of a Security breach, CONTRACTOR shall notify the person whose PII has been compromised. The notification shall comply with the notification requirements of California Civil Code Sections 1798.20.
10. INDEMNIFICATION.

10.1. **Indemnification by ENC.** ENC will defend Licensee against any claim, demand, suit, or proceeding ("Claim") made or brought against Licensee by a third party alleging that the use of the Subscription Services as permitted hereunder infringes or misappropriates the intellectual property rights of such third party, and ENC shall indemnify and hold harmless Licensee from and against any damages finally awarded against, and for reasonable attorney’s fees incurred by, Licensee in connection with any such Claim.

10.2. **Indemnification by Licensee.** Licensee shall defend ENC against any Claim made or brought against ENC alleging that Licensee Data, or Licensee’s use of the Subscription Services in violation of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law, and shall indemnify and hold ENC harmless from and against any damages finally awarded against, and for reasonable attorney’s fees incurred by, ENC in connection with any such Claim.

10.3. **Exclusive Remedy.** ENC shall have no obligation under Section 10.1 for any Claim to the extent arising out of or is based upon: (i) Licensee’s use of the Subscription Services not in compliance with this Agreement or the Documentation; (ii) Licensee’s combination of the Subscription Services with software, hardware, system, data, or other materials not supplied or authorized by ENC (unless expressly permitted by the Documentation) without ENC’s prior written authorization; (iii) ENC’s adherence to Licensee’s written specifications or written instructions pursuant to a separate SOW or (iv) the Licensee Data. In the event an infringement or misappropriation Claim involving the Subscription Services is brought or threatened, or is likely to be brought or threatened in ENC’s reasonable opinion, ENC will, at its sole option and expense, (x) procure for Licensee the right to continue to use the Subscription Services, (y) modify the Subscription Services in a manner that does not materially degrade the functionality of the Subscription Services functionality, or (z) terminate the affected Subscription Services and, with respect to such termination, refund the unearned portion of the applicable pre-paid Fees. Notwithstanding anything else herein, the foregoing indemnification obligations are ENC’s only obligations and liability, and Licensee’s exclusive remedy, in respect of any infringement or misappropriation Claim.

10.4. **Process.** Each Party seeking indemnification hereunder shall provide the other Party with: (i) prompt written notice of any Claim for which indemnification is sought; (ii) complete control of the defense and settlement of such claim; and (iii) reasonable assistance and cooperation in such defense at the indemnifying Party’s expense. Notwithstanding the foregoing, the indemnifying Party may not enter into a settlement of a claim that involves a remedy other than the payment of money by the indemnified Party (which amounts must be subject to indemnification by the indemnifying Party) without the indemnified Party’s written consent.

11. LIMITATION OF LIABILITY.

11.1. **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY OTHER PERSON OR ENTITY FOR (I) ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE, HOWEVER ARISING, UNDER ANY THEORY OF LIABILITY, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THE SUBSCRIPTION SERVICES OR THESE TERMS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) DIRECT DAMAGES IN EXCESS OF THE FEES ACTUALLY PAID OR PAYABLE BY LICENSEE UNDER THE AGREEMENT FOR THE AFFECTED SERVICE DURING THE TWELVE (12) MONTHS PRIOR TO THE DATE ON WHICH THE CLAIM RESULTING IN SUCH DAMAGES AROSE. THE FOREGOING LIMITATIONS AND EXCLUSIONS DO NOT APPLY TO EITHER PARTY’S INDEMNIFICATION OBLIGATIONS, OR LICENSEE’S FAILURE TO REMIT ALL FEES PROPERLY DUE AND OWING TO ENC.

12. INSURANCE.

12.1. During the Term, ENC will maintain in effect, at all times, all the insurance specified below with insurers having an A.M. Best rating of A-VIII or better.

12.2. Commercial General Liability Insurance. ENC shall maintain commercial general liability insurance ("CGL") with a limit of not less than $1,000,000 per occurrence, and $2,000,000 aggregate.
12.3. Workers' Compensation and Employer's Liability Insurance. ENC shall maintain statutory workers' compensation insurance as required by applicable laws. ENC shall also maintain employer's liability insurance. The limit for each policy shall not be less than $500,000 per occurrence.

12.4. Business Auto Liability Insurance. ENC shall maintain business auto liability insurance with a limit of not less than $1,000,000 each accident. Such insurance shall cover liability arising out of any auto, including owned, hired, and non-owned.

12.5. Excess/Umbrella Liability Insurance. ENC shall maintain excess or umbrella liability insurance with a limit of not less than $4,000,000 per occurrence.

12.6. Errors and Omissions Insurance. ENC shall maintain errors and omissions insurance with a limit of not less than $5,000,000.

Certificates of insurance evidencing all these coverages shall be provided to Licensee upon request once each year during the Term.

12.7. Cyber Liability Insurance. ENC shall obtain cyber liability insurance, with limits not less than $2,000,000 per occurrence or claim. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by ENC in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.

If policy is a claims-made policy such coverage shall be continued for five (5) years following the completion of all service and additional service under this agreement. The retroactive date must be shown and must be before the date of the contract or the beginning of contract work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the ENC must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.

13. GENERAL TERMS.

13.1. Changes to the Subscription Services. ENC may modify the Subscription Services from time to time by removing unused features or substituting outdated features with new features that have similar or improved functionality or otherwise, as may be necessary to meet any applicable legal, regulatory, or industry-standard requirements or demands.

13.2. Notice. Any notices required by this Agreement, or any attachment hereto, shall be in writing and shall be given to the parties by hand, by nationally recognized overnight courier service or by express, registered, or certified mail, postage prepaid, return receipt requested or by email (provided the original is delivered via one of the preceding methods on or prior to the fifth (5th) day after transmission of the e-mail). Notices shall be deemed to have been given upon actual receipt thereof. Notices to ENC shall be directed via mail to EnergyCAP, LLC, 360 Discovery Drive, Boalsburg, PA, 16827, via fax: 719.623.0577, or via email: Accounts.Receivable@EnergyCAP.com.

13.3. Governing Law and Jurisdiction. This Agreement shall be governed by, construed in accordance, and subject to the laws of the state of Delaware, without regard to its conflict of laws provisions. Any disputes relating to this Agreement shall be resolved exclusively in the state or federal courts located in the state of the Party initiating the dispute and each Party irrevocably consents to the jurisdiction of such courts.

13.4. Waiver of Jury Trial. Each Party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

13.5. Force Majeure. A Party shall be excused from complying with this Agreement and the Orders if, to the extent, and for as long as, such Party's compliance is delayed or prevented by a Force Majeure Event; provided, however, a Force Majeure Event shall not excuse performing duties that are unrelated to the Force Majeure Event, including discharging financial obligations.
13.6. **Export Compliance.** Each Party shall comply with the export laws and regulations of the United States in providing and using the Services. Without limiting the foregoing, (i) each Party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) You shall not permit Users to access or use Services in violation of any U.S. export embargo, prohibition or restriction.

13.7. **Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

13.8. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

13.9. **Waiver and Cumulative Remedies.** No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

13.10. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

13.11. **Attorney Fees.** If either Party engages attorneys to enforce any rights out of or relating to this Agreement, the prevailing Party in any action to enforce or interpret this Agreement shall be entitled to recover any and all costs and expenses of any nature including, attorneys’ and experts’ fees and costs. Licensee shall be responsible for any collection fees incurred by ENC in collecting Fees.

13.12. **Assignment.** Neither Party may assign this Agreement or any Order without the prior written consent of the other Party, except to an Affiliate or an entity that acquires all or substantially all of its stock, business or assets, whether through merger, consolidation, reorganization or otherwise. Any assignment in violation of the foregoing shall be void and of no effect.

13.13. **Entire Agreement.** This Agreement, together with any Order, attachments and all documents incorporated by reference herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreements, negotiations, understandings, or other matters, whether oral or written, with respect to the subject matter hereof. This Agreement shall take precedence over any conflicting terms in any Order or any Licensee-provided purchase or procurement documentation, such as a purchase order, acknowledgement form, or other similar documentation and any pre-printed terms and conditions on or attached to Licensee’s purchase orders or invoices will be of no force or effect.

13.14. **Modifications.** This Agreement can only be modified, changed, or amended in writing and signed by a duly authorized representative of each of the parties.
IN WITNESS, WHEREOF, the parties, by their duly authorized representatives, have caused this Agreement to be executed as of the date first written below.

Licensee
City of Sacramento
A/P Processing Center
915 I Street, Floor 4
Sacramento, CA 95814-2608

By: ________________________________
(Signature)
Name: ______________________________
Title: ______________________________
Date: ______________________________

EnergyCAP
EnergyCAP, LLC
360 Discovery Drive
Boalsburg, PA 16827

By: ________________________________
Name: John Heinz
Title: VP, Strategic Accounts
Date: Jun 4, 2024

APPROVED AS TO FORM:

Angel Solis
Senior Deputy City Attorney

ATTEST:
Subscription Services and Fees

Initial Term: 09/01/2024 – 08/31/2029  
Effective Date: 09/01/2024

### Subscription Services

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
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<tbody>
<tr>
<td>Software License</td>
<td>EnergyCAP UtilityManagement Enterprise Subscription</td>
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<tr>
<td></td>
<td>Advanced Hosting Package</td>
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<th>Year 1</th>
<th>Year 2</th>
<th>Year 3</th>
<th>Year 4</th>
<th>Year 5</th>
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<td>Advanced Hosting Package</td>
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### Subscription Details

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<th>Description</th>
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<td>Licensed Software Features</td>
<td>Cost Avoid; Custom Benchmarks; Interval Data; Routes; Splits; Submeters; Target; Web Client; Cal; Norm; Rates</td>
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<td>Subscription Effective Date</td>
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<tr>
<td>Initial Term</td>
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</tr>
<tr>
<td>Licensed Number of Meters</td>
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<tr>
<td>Licensed Number of Users</td>
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</tbody>
</table>

### Invoicing Schedule

### Annual Renewal Fee

Renewal Invoice – Upon Anniversary of Subscription Effective Date

| Subscription Services | 100% |

©2023 EnergyCAP, LLC
EnergyCAP UtilityManagement Terms

Licensee’s right to access and use the EnergyCAP UtilityManagement modules listed on the applicable Order (the “EnergyCAP Services”) is subject to the following additional terms. If there is a conflict between the terms set forth below and the Agreement, the terms set forth below control for purposes of the EnergyCAP UtilityManagement Services:

1. Additional Definitions:
   a. “Meter” means a point of service as itemized on a vendor bill and tracked in the Services as a meter/logical device. A Meter may represent points of service for which no physical meter exists, such as sewer, fire lines, outdoor lighting, fuel oil tanks, storm drainage, internet service provider and telephone service, etc. Meter records that are used in split, calculated, and virtual bill processes for chargeback, cost allocation, and distribution purposes are included in the total Meter count for purposes of this Agreement.

2. The Fees listed in the applicable Order are based upon the Licensee’s Meter inventory and Licensee’s current software module utilization needs as of the Effective Date. All Meters present in the database will count against the total Meter count. The number of Meters will be reviewed annually during the Order Term and will be automatically adjusted to the annualized Tier (as set forth on the Order) and billed annually in advance. Excess utilization (i.e., Meters in excess of the amount stated on the applicable Order) will be billed quarterly in arrears at the per Tier “Cost per Meter” set forth on the Order.

3. Hosting services include the ability to store bill images and file attachments for up to five (5) Gigabytes of storage or at the storage limits set forth in the applicable Order (if greater).