TECHNOLOGY MARKETPLACE TERM SHEETS

	TERM SHEET	Examples
1.	**P-545 Software Licensing**	Software Licensing includes: • Individual/Multi-user licenses • Perpetual licenses • Subscription/Limited Term licenses
2.	**P-540 Software Maintenance**	Software Maintenance includes: • Correcting errors, defects or malfunctions of software • Providing standard telephone and/or online support concerning the installation and use of software • Standard off-site training in the installation and use of software • Detection, warning and correction of viruses
3.	**P-530 Equipment Maintenance**	Equipment Maintenance includes: • Repair to equipment • Providing telephone and/or online support concerning the installation and use of equipment • Detection, warning and correction of issues related to equipment

4.	**P-648 SaaS**	SaaS includes:
		
		• Provision of products or services rendered via a hosted cloud delivery structure including, but not limited to:
		   • Software as a Service
		   • Platform as a Service
		   • Infrastructure as a Service

5.	**P-600 Professional Services**	Professional Services includes services related to off the shelf software, including but not limited to: • Configuration services • Integration services • Implementation services • Managed Services • On-site Training
6.	**P-542 Software Development**	Software Development includes services related to custom software developed for City, including but not limited to: • Configuration services • Integration services • Implementation services • Managed Services • On-site Training

This Software License Term Sheet ("Term Sheet") is attached, and incorporated as though fully set forth therein, to each Purchase Order for Software License hereby issued by the City and County of San Francisco ("City") pursuant to any of the Technology Marketplace Agreements identified in Exhibit 1 ("Technology Marketplace Agreements"), heretofore entered into by and between the City and those Contractors selected by City pursuant to a Request for Proposals 99400 issued by City on or about July 2018.

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

Acceptance	Notice from the City to Contractor that the Licensed Software meets the specifications contained in the Documentation. City's Acceptance of the Licensed Software shall be governed by the procedures set forth in Section 5.
City	Means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing".
Contractor	Contractor shall mean the Contractor with whom the City has entered into the Technology Marketplace Agreements identified in Exhibit 1 and the entity to whom a Purchase Order is hereby issued for the purchase of one or more perpetual Software Licenses.
Documentation	The technical publications relating to the use of the Licensed Software, such as reference, installation, administrative and programmer manuals, provided by Contractor to City.
Licensed Software	One or more of the proprietary computer software programs identified in the accompanying Purchase Order, all related materials, Documentation, all corrections, patches or updates thereto, and other written information received by City from Contractor, whether in machine-readable or printed form. The Purchase Order may identify more than one software product or more than one copy of any product.
Object code	Machine readable compiled form of Licensed Software provided by Contractor.
Party and Parties	The City and Contractor either collectively or individually.

Purchase Order	Means the accompanying Purchase Order and any other corresponding documents, such as a Software License Agreement submitted by Contractor to City ("Corresponding Documents") in response to a request for quote by City for the Software License Services described in the Purchase Order. The Purchase Order is issued by City to Contractor pursuant to a Technology Marketplace Agreement, which agreement is identified in the Purchase Order. The Purchase Order and all Corresponding Documents are incorporated into this Term Sheet as though fully set forth herein.
Source code	The human readable compliable form of the Licensed Software to be provided by Contractor.
Specifications	The functional and operational characteristics of the Licensed Software as described in Contractor's current published product descriptions and technical manuals.
Term Sheet	Means this document, the accompanying Purchase Order, all attached exhibits, and all applicable City Ordinances and Mandatory City Requirements in the Technology Marketplace Agreement that are specifically incorporated into this Term Sheet by reference as provided herein.

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the City. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the City, unless otherwise indicated by the context.

2. Term of the Term Sheet. The term of this Term Sheet shall commence upon issuance of the accompanying Purchase Order and Corresponding Documents and shall continue in perpetuity or, if a subscription, during the term outlined in the Purchase Order and Corresponding Documents, unless sooner terminated in accordance with the provisions of this Term Sheet or the applicable Technology Marketplace Agreement.

3. License

a. Grant of License. Contractor grants City a non-exclusive and non-transferable license to use the Licensed Software in accordance with the terms and conditions of the Purchase Order, Corresponding Documents and this Term Sheet. City acknowledges and agrees that the Licensed Software is the proprietary information of Contractor and that City has no title or right of ownership in the Licensed Software.

Notwithstanding anything to the contrary in the Purchase Order and Corresponding Documents, and upon written request by City in the accompanying Purchase Order, Contractor agrees that in the event it discontinues its obligations under the terms of this Term Sheet, except as expressly provided for in Section 17 (Termination) of the Agreement, or ceases to market and/or provide maintenance and support for the Licensed Software, and there is no successor in interest by merger, operation of law, assignment, purchase, or otherwise, it will provide City,

without charge, one (1) copy of the then-current Source Code for all of the programs and all supporting Documentation for the Licensed Software then operating and installed at City's locations. If City should obtain the Source Code and the Documentation pursuant to this section, the only use made of the Source Code and the Documentation will be for the proper maintenance of the Licensed Software in connection with City's use of the Licensed Software as provided for, and limited by, the provisions of this Term Sheet.

Notwithstanding anything to the contrary in the Purchase Order and Corresponding Documents, and upon written request by City in the accompanying Purchase Order, in furtherance of its obligations as stated above, Contractor will provide to City a copy of the Source Code which corresponds to the most current version of the Licensed Software. Contractor agrees to update, enhance or otherwise modify such Source Code promptly upon its release of a new version of the Licensed Software to its other Licensees such that the Source Code is maintained as corresponding to the newest released version of the Licensed Software. City's right to possession of the Source Code will be governed by the Accompanying Purchase Order.

b. **Restrictions on Use.** City is authorized to use the Licensed Software only for City's municipal purposes.

c. **Copies of Licensed Software.** Notwithstanding anything to the contrary in the Purchase Order and Corresponding Documents, and upon written request by City in the accompanying Purchase Order, for the purpose of any bona fide City disaster recovery plan or with respect to the use of computer software in its municipal operations, City may make one copy of the Licensed Software for archival purposes. The use of such archival copy shall be limited to (1) the purpose of conducting limited testing of the disaster recovery plan's procedures and effectiveness and (2) during any period subsequent to the occurrence of an actual disaster during which the City cannot operate the Licensed Software on City premises. City agrees to furnish evidence of its disaster recovery plan and procedures upon Contractor's request.

d. **Documentation.** Contractor shall provide City with the Licensed Software specified in the Accompanying Purchase Order and Corresponding Documents and, upon written request by City in the accompanying Purchase Order, a minimum of two copies of the Documentation per installation. Contractor grants to City permission to duplicate all printed Documentation for City's internal use.

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

f. **Authorized Modification.** City shall also be permitted to develop, use and modify Application Program Interfaces (API's), macros and user interfaces. For purposes of this Term Sheet, such development shall be deemed an authorized modification. Any such APIs, macros or other interfaces developed by the City shall become the property of the City. Contractor has no general objections to the City's use of third-party programs in conjunction with the Licensed Software under this Term Sheet. Contractor recognizes that City has and will license third-party programs that City might use with Contractor's product. Contractor agrees that such use does not constitute an unauthorized modification or violate the license granted under this Term Sheet.

4. **Delivery**

a.   **Delivery.** One copy of each of the Licensed Software products in computer readable form shall be delivered to City not later than thirty days upon issuance of the Accompanying Purchase Order. Program storage media (magnetic tapes, disks and the like) and shipping shall be provided at no charge by Contractor.

b.   **Installation.** If applicable, and upon written request by City in the accompanying Purchase Order, Contractor shall install the programs in accordance with the terms set forth in the Accompanying Purchase Order.

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

5.   **Acceptance Testing.** After Contractor or City, as the case may be, has installed the Licensed Software, the City shall have a period of thirty (30) days ("Acceptance Testing Period") from the date of installation to verify that the Licensed Software substantially performs to the specifications contained in the Documentation. In the event that the City determines that the Licensed Software does not meet such specifications, the City shall notify the Contractor in writing, and Contractor shall modify or correct the Licensed Software so that it satisfies the Acceptance criteria. The date of Acceptance will be that date upon which City provides Contractor with written notice of satisfactory completion of Acceptance testing. If City notifies Contractor after the Acceptance Testing Period that the Licensed Software does not meet the Acceptance criteria of this section, then City shall be entitled to terminate this License in accordance with the procedures specified in Section 17(b) herein, and shall be entitled to a full refund of the license fee.

6.   **Training.** If applicable, and upon written request by City in the accompanying Purchase Order, Contractor will provide training in accordance with the terms set forth in the Accompanying Purchase Order at Contractor's current best government rates.

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

8.   **Maintenance and Support**

a.   **Maintenance and Support Services.** After Acceptance of the Licensed Software and subject to the terms, conditions, and charges set forth in this Term Sheet, accompanying Purchase Order and Corresponding Documents, Contractor will provide City with maintenance and support services for the Licensed Software.

b.   Notwithstanding Subsection "a" of this Section, and upon written request by City in the accompanying Purchase Order, Maintenance and Support Services shall include: (i) Assistance as necessary to cause the Licensed Software to perform in accordance with the Specifications as set forth in the Documentation; (ii) Improvements, enhancements, extensions and other changes to the Licensed Software Contractor may develop, and (iii) Updates to the Licensed Software, as required, to cause it to operate under new versions or releases of the

operating system specified in the Accompanying Purchase Order, so long as such updates are made generally available to Contractor's other Licensees.

      c.   **Changes in Operating System.** Upon written request by City in the accompanying Purchase Order, if City desires to obtain a version of the Licensed Software that operates under an operating system not specified in the Accompanying Purchase Order and Corresponding Documents, Contractor will provide City with the appropriate version of the Licensed Software, if available, on a 90-day trial basis without additional charge, provided City has paid all maintenance and support charges then due. At the end of the 90-day trial period, City will elect one of the following three options: (i) retain and continue the old version of the Licensed Software, return the new version to Contractor and continue to pay the applicable rental or license fee and maintenance charges for the old version; (ii) retain and use the new version of the Licensed Software and return the old version to Contractor, provided City pays Contractor the applicable rental or license fee and maintenance charges for the new version of the Licensed Software; or (iii) retain and use both versions of the Products, provided City pays Contractor the applicable rental or license fee and maintenance charges for both versions of the Licensed Software. City will promptly issue the necessary authorization document(s) to accomplish the above.

9.   **Warranties: Right to Grant License.** Contractor hereby warrants that it has title to and/or the legal authority to grant a license of the Licensed Software to the City.

10.   **Warranties: Conformity to Specifications.** Contractor warrants that when the Licensed Software specified in Accompanying Purchase Order and Corresponding Documents, including all updates and improvements to the Licensed Software, are delivered to City free from defects as to design, material, and workmanship and will perform on the Designated CPU in accordance with the Contractor's published specifications for the Licensed Software for a period of 365 days from City's Acceptance of such Licensed Software.

11.   **Infringement Indemnification.** If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the Licensed Software infringes a patent, copyright, or any right of a third party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the Licensed Software constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement. In the event of any settlement, however, Contractor will not consent to the entry of any judgment or enter into any settlement with respect to the judicial action or informal claim without the prior written consent of City, which consent will not be unreasonably withheld, unless the judgment or proposed settlement involves only the payment of money damages by Contractor and does not impose any obligation upon City and Contractor obtains the full and complete release of City. City shall have the right to have any suit or proceeding monitored by counsel of City's choice and at its expense. If Contractor does not assume the defense of Claim as required above, (i) City may defend against, and consent to the entry of any judgment or enter into any settlement with respect to the Claim in any manner it

reasonably may deem appropriate, and City need not consult with, or obtain any consent from, Contractor, and (ii) Contractor will remain responsible for any losses City may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Claim to the fullest extent provided in this Section.

In the event a final injunction is obtained against City's use of the Licensed Software by reason of Infringement, or in Contractor's opinion City's use of the Licensed Software is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the Licensed Software as contemplated hereunder, (b) replace the Licensed Software with a non-infringing, functionally equivalent substitute Licensed Software, or (c) suitably modify the Licensed Software to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Licensed Software. If none of these options is reasonably available to Contractor, then this Term Sheet or relevant part of this Term Sheet may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid under this Term Sheet for the license of such infringing Licensed Software. Any unauthorized modification or attempted modification of the Licensed Software by City or any failure by City to implement any improvements or updates to the Licensed Software, as supplied by Contractor, shall void this indemnity unless City has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on City's use or combination of the Licensed Software with products or data of the type for which the Licensed Software was neither designed nor intended to be used.

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

13. Qualified Personnel. Work under this Term Sheet shall be performed only by competent personnel under the supervision of and/or in the employment of Contractor (or Contractor's authorized subcontractors). Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor.

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

15. Nondisclosure. City agrees that it shall treat the Licensed Software with the same degree of care as it treats like information of its own, which it does not wish to disclose to the public, from the date the Licensed Software is accepted by the City until the license is terminated as

provided herein. The obligations of the City set forth above, however, shall not apply to the Licensed Software, or any portion thereof, which:

a.   is now or hereafter becomes publicly known;

b.   is disclosed to the City by a third party which the City has no reason to believe is not legally entitled to disclose such information;

c.   is known to the City prior to its receipt of the Licensed Software;

d.   is subsequently developed by the City independently of any disclosures made hereunder by Contractor;

e.   is disclosed with Contractor's prior written consent; or

f.   is disclosed by Contractor to a third party without similar restrictions.

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

17.   Termination

a.   **Basis for Termination by Contractor.** Contractor shall have the right to terminate this Term Sheet, if City is delinquent in making payments of any sum due under this Term Sheet and continues to be delinquent for a period of ninety days after the last day payment is due; provided, however, that written notice is given to City by Contractor of the expiration date of the ninety-day delinquency period at least ten days prior to the expiration date or, to terminate this Term Sheet if City commits any other breach of this Term Sheet and fails to remedy such breach within thirty days after receipt of written notice by Contractor of such breach.

b.   **Basis for Termination by City.** City shall have the right, without further obligation or liability to Contractor (except as specified in Sections 16 (Protection of Private Information) and 17(c) (Disposition of Licensed Software on Termination) hereof): (i) to immediately terminate this Term Sheet if Contractor commits any breach of this Term Sheet and fails to remedy such breach within thirty (30) days after written notice by City of such breach, in which event, Contractor shall reimburse City in the same manner as for the removal of the Licensed Software due to infringement under Section 11; or (ii) to terminate this Term Sheet upon ninety (90) days prior written notice for any reason if the license granted hereunder is for any term other than perpetual. In the event the license granted is perpetual, termination of this Term Sheet by City shall be effective upon receipt by Contractor of written notice of said termination.

c. **Disposition of Licensed Software on Termination**. Upon the expiration or termination of this Term Sheet for any reason other than as provided for in Section 3(a) (Grant of License), City shall immediately: (i) return the Licensed Software to Contractor together with all Documentation; (ii) purge all copies of the Licensed Software or any portion thereof from all CPU's and from any computer storage medium or device on which City has placed or permitted others to place the Licensed Software; and (iii) give Contractor written certification that through its best efforts and to the best of its knowledge, City has complied with all of its obligations under Section 17(c).

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

13	Infringement Indemnification.	20	Non-Waiver of Rights
15	Nondisclosure	21	Term Sheet Made in California; Venue
16	Protection of Private Information	22	Entire Agreement

18. Notice to the Parties. Unless otherwise indicated elsewhere in this Term Sheet, all written communications sent by the Parties may be by U.S. mail, and e-mail, and shall be addressed as set forth in the accompanying Purchase Order.

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

19. Modification of Term Sheet. This Term Sheet may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as the applicable Technology Marketplace Contract.

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

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

22. Order of Precedence. This Term Sheet may be modified only as provided in Section 19, "Modification of Term Sheet." Should the terms of this Term Sheet conflict with the Purchase Order, Corresponding Documents and/or the Technology Marketplace Agreement into which this Term Sheet is hereby incorporated, the terms of the Technology Marketplace Agreement shall control, followed by this Term Sheet shall control.

23. Exhibits.
1: Technology Marketplace Agreements

Exhibit 1
Technology Marketplace Agreements

Prime Contractor	Prime Contract ID		Prime Contractor	Prime Contract ID
Actnet Advanced Technology Corporation	1000012952		CCS Global Tech	1000012601
	1000012953		CDW Government	1000012602
	1000012954		Central Computers	1000012603
	1000012955		Computerland	1000012604
Beta Nineties Computer, Inc.	1000012956		ConvergeOne	1000012605
	1000012957		Cornerstone JV	1000012606
Diamond Technology, Inc.	1000012958		DPP Tech	1000012607
	1000012959		Dynamic Systems	1000012608
	1000012960		En Pointe	1000012609
Exigy, Inc.	1000012961		Intervision	1000012610
	1000012962		Presidio	1000012611
	1000012963		Robert Half	1000012612
Farallon Geographics, Inc.	1000012964		Slalom	1000012613
	1000012965		Softnet	1000012614
Five Paths, LLC	1000012966		Stellar	1000012615
	1000012968		Variedy	1000012616
	1000012969		World Wide Technology	1000012617
GenSigma LLC	1000012970		X Tech JV	1000012618
	1000012971		Zones	1000012619
Parthex Tech, Inc.	1000012972		Ameritech	1000012721
Spiral Scout, LLC	1000012973		BridgeMicro	1000012722
	1000012974		Delta-CM Pros JV	1000012723
Studio 151	1000012975		Elyon	1000012724
T&S Trading Co.	1000012976		Ipso Facto	1000012725
	1000012977		LearnIT	1000012726
	1000012978		NuSpective	1000012727
Toptek Micro Center, Inc.	1000012980		Pantheon	1000012728
Two Rivers, Corp.	1000012981		Staples	1000012729
Xterra Solutions Inc.	1000012982		Vox	1000012730
	1000012983			
	1000012984			

City and County of San Francisco Technology Marketplace
Software Maintenance Term Sheet

This Software Maintenance Term Sheet ("Term Sheet") is attached, and incorporated as though fully set forth therein, to each Purchase Order for Software Maintenance hereby issued by the City and County of San Francisco ("City") pursuant to any of the Technology Marketplace Agreements identified in Exhibit 1 ("Technology Marketplace Agreements"), heretofore entered into by and between the City and those Contractors selected by City pursuant to a Request for Proposals 99400 issued by City on or about July 2018.

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

City	Means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing".
Contractor	Contractor shall mean the Contractor with whom the City has entered into the Technology Marketplace Agreement identified in Exhibit 1 and the entity to whom a Purchase Order is hereby issued for the purchase of Software Maintenance.
Errors, Defects and Malfunctions	Either a deviation between the function of the Software and the documentation furnished by Contractor for the Software, or a failure of the Software which degrades the use of the Software.
Fix	Repair or replacement of source, object or executable code in the Software to remedy an Error, Defect or Malfunction.
Party and Parties	The City and Contractor either collectively or individually.
Patch	Temporary repair or replacement of code in the Software to remedy an Error, Defect or Malfunction. Patches may be made permanent and released in Subsequent Releases of the Software.
Priority Category	A priority assigned to an Error, Defect or Malfunction, designating the urgency of correcting an Error, Defect or Malfunction. Assignment of a Priority Category to an Error, Defect or Malfunction is based on City's determination of the severity of the Error, Defect or Malfunction and Contractor's reasonable analysis of the priority of the Error, Defect or Malfunction.
Priority Protocol	Based on the Priority Category, rules specifying the turnaround time for correcting Errors, Malfunctions and Defects; escalation procedures, and personnel assignment.

Purchase Order   Means the accompanying Purchase Order and any other corresponding documents, such as a Software Maintenance Agreement submitted by Contractor to City ("Corresponding Documents") in response to a request for quote by City for the Software Maintenance Services described in the Purchase Order. The Purchase Order is issued by City to Contractor pursuant to a Technology Marketplace Agreement, which agreement is identified in the Purchase Order. The Purchase Order and all Corresponding Documents are incorporated into this Term Sheet as though fully set forth herein.

Software   Licensed programs and associated documentation licensed to City through Prime Contractor**,** as listed in the accompanying Purchase Order and Corresponding Documents, and any modification or Upgrades or modifications to the program(s) provided under this Term Sheet.

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

Support Services   The Software support service required under this Term Sheet. Support Services include, but are not limited to, correcting an Error, Defect or Malfunction; providing telephone and/or online support concerning the installation and use of the Software; training in the installation and use of the Software; on-site consulting and application development services; detection, warning and correction of viruses; and disabled/disabling code.

Term Sheet   Means this document, the accompanying Purchase Order, all attached exhibits, and all applicable City Ordinances and Mandatory City Requirements in the Technology Marketplace Agreement that are specifically incorporated into this Term Sheet by reference, as provided herein.

Upgrade   Either an enhancement to the Software code to add new features or functions to the system or software programming revisions containing corrections to Errors, Defects and Malfunctions that have been reported by users or discovered by the Contractor.

Warranty Period   A period commencing with the installation of the Software product during which reported Errors, Defects and Malfunctions for Software products are corrected without charge in accordance with the provisions below.

Workaround   A change in the procedures followed or end user operation of the Software to avoid an Error, Defect or Malfunction without significantly impairing functionality or degrading the use of the Software.

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the **City**. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the City, unless otherwise indicated by the context.

2.   Term of the Term Sheet. The term of this Term Sheet shall reflect the term of the Support Services set forth in the accompanying Purchase Order and Corresponding Documents, unless earlier terminated in accordance with the provisions of this Term Sheet or the applicable Technology Marketplace Agreement.

3.   Scope of Service Coverage

a.   Contractor shall provide Support Services and provide Upgrades during the term of this Software Maintenance Term Sheet in accordance with the Purchase Order and Corresponding Documents.

b.   Notwithstanding Subsection "a" of this Section 3, and upon written request by City in the accompanying Purchase Order, Support Services shall meet or exceed the requirements set forth below in subsections "c" and "d" of this Section 3.

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

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

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

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

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

1)   **Priority 1 Protocol:** Within two hours, Contractor assigns a product technical specialist(s) to diagnose and correct the Error, Defect or Malfunction; thereafter, Contractor shall provide ongoing communication about the status of the correction; shall proceed to immediately provide a Fix, a Patch or a Workaround; and exercise all commercially reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Subsequent Release. Contractor will escalate resolution of the problem to personnel with successively higher levels of technical expertise until the Error, Defect or Malfunction is corrected.

2)   **Priority 2 Protocol:** Within four hours, Contractor assigns a product technical specialist(s) to diagnose the Error, Defect or Malfunction and to commence correction of the Error, Defect or Malfunction; to immediately provide a Workaround; to provide escalation procedures as reasonably determined by Contractor's staff; and to exercise all commercially

reasonable efforts to include a Fix or Patch for the Error, Defect or Malfunction in the next Software maintenance release.

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

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

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

6.　　**Payment Does Not Imply Acceptance of Work.**　The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, the Licensed Software, although the unsatisfactory character of such work, or Licensed Software may not have been apparent or detected at the time such payment was made.　Software, components, or workmanship that do not conform to the requirements of this Prime Contract Term Sheet may be rejected by City and in such case must be replaced by Contractor without delay.

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

8.　　**Responsibility for Equipment**.　City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

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

10.　　**Termination.**

a. **Termination for Cause.** In the event Contractor fails to perform any of its obligations under this Term Sheet, this Term Sheet may be terminated and all of Contractor's rights hereunder ended. Termination will be effective after ten days written notice to Contractor. In the event of such termination, Contractor will be paid for those services performed under this Term Sheet to the satisfaction of the City, up to the date of termination. However, City may offset from any such amounts due Contractor any costs City has or will incur due to Contractor's non-performance. Any such offset by City will not constitute waiver of any other remedies City may have against Contractor for financial injury or otherwise.

b. **Termination for Convenience**. City shall have the option, in its sole discretion, to terminate this Term Sheet, at any time during the term thereof, for City's convenience and without cause by giving Contractor thirty days written notice of such termination. In the event of such termination, Contractor will be paid for those services performed, pursuant to this Term Sheet, to the satisfaction of the City up to the date of termination. In no event will City be liable for costs incurred by Contractor after receipt of notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on this Term Sheet, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not authorized or reasonable under this section.

11. Rights and Duties Upon Termination or Expiration. This Section and the following Sections of the Term Sheet shall survive termination or expiration of this Term Sheet:

6.	Payment Does Not Imply Acceptance of Work	15.	Prime Contract Term Sheet Made in California; Venue
8.	Responsibility for Equipment	16.	Protection of Private Information
14.	Non-Waiver of Rights	18.	Entire Agreement

Subject to the immediately preceding sentence, upon termination of this Term Sheet prior to expiration of the term specified in Section 2, this Term Sheet shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Term Sheet, and any completed or partially completed work which, if the Term Sheet had been completed, would have been required to be furnished to the City. This subsection shall survive termination of this Term Sheet.

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

13.   Notices to Parties. Unless otherwise indicated elsewhere in this Term Sheet, all written communications sent by the Parties may be by U.S. mail, e-mail or fax, and shall be addressed as set forth in the accompanying Purchase Order and/or Corresponding Documents.

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

14.   Non-Waiver of Rights. The waiver by either Party of any breach by either Party of any term, covenant or conditions hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

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

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

17.   Modification of Term Sheet. This Term Sheet may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as the applicable Technology Marketplace Agreement.

18.   Order of Precedence. This Term Sheet may be modified only as provided in Section 17, "Modification of Term Sheet." Should the terms of this Term Sheet conflict with the Purchase Order, Corresponding Documents and/or the Technology Marketplace Agreement into which this Term Sheet is hereby incorporated, the terms of the Technology Marketplace Agreement shall control, followed by this Term Sheet shall control.

19.   Incorporation of Recitals. The matters recited above are hereby incorporated into and made part of this Term Sheet.

20.   Exhibits.

        1:      Technology Marketplace Agreements

Exhibit 1
Technology Marketplace Agreements

Contractor	Agreement ID
Actnet Advanced Technology Corporation	1000012952
	1000012953
	1000012954
	1000012955
Beta Nineties Computer, Inc.	1000012956
	1000012957
Diamond Technology, Inc.	1000012958
	1000012959
	1000012960
Exigy, Inc.	1000012961
	1000012962
	1000012963
Farallon Geographics, Inc.	1000012964
	1000012965
Five Paths, LLC	1000012966
	1000012968
	1000012969
GenSigma LLC	1000012970
	1000012971
Parthex Tech, Inc.	1000012972
Spiral Scout, LLC	1000012973
	1000012974
Studio 151	1000012975
T&S Trading Co.	1000012976
	1000012977
	1000012978
Toptek Micro Center, Inc.	1000012980
Two Rivers, Corp.	1000012981
Xterra Solutions Inc.	1000012982
	1000012983
	1000012984

Contractor	Agreement ID
CCS Global Tech	1000012601
CDW Government	1000012602
Central Computers	1000012603
Computerland	1000012604
ConvergeOne	1000012605
Cornerstone JV	1000012606
DPP Tech	1000012607
Dynamic Systems	1000012608
En Pointe	1000012609
Intervision	1000012610
Presidio	1000012611
Robert Half	1000012612
Slalom	1000012613
Softnet	1000012614
Stellar	1000012615
Variedy	1000012616
World Wide Technology	1000012617
X Tech JV	1000012618
Zones	1000012619
Ameritech	1000012721
BridgeMicro	1000012722
Delta-CM Pros JV	1000012723
Elyon	1000012724
Ipso Facto	1000012725
LearnIT	1000012726
NuSpective	1000012727
Pantheon	1000012728
Staples	1000012729
Vox	1000012730

City and County of San Francisco Technology Marketplace
Equipment Maintenance Term Sheet

This Equipment Maintenance Term Sheet ("Term Sheet") is attached, and incorporated as though fully set forth therein, to each Purchase Order for Equipment Maintenance hereby issued by the City and County of San Francisco ("City") pursuant to any of the Technology Marketplace Agreements identified in Exhibit 1 ("Technology Marketplace Agreements"), heretofore entered into by and between the City and those Contractors selected by City pursuant to a Request for Proposals 99400 issued by the City on or about July 2018.

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

        a.   "Term Sheet" shall mean this document, the accompanying Purchase Order, all attached exhibits, and all applicable City Ordinances and Mandatory City Requirements in the Technology Marketplace Agreement that are specifically incorporated into this Term Sheet by reference, as provided herein.

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

        c.   "Contractor" shall mean the Contractor with whom the City has entered into the Technology Marketplace Agreement identified in Exhibit 1 and the entity to whom a Purchase Order is hereby issued for the purchase of Equipment Maintenance.

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

        e.   "Equipment Maintenance Services" shall mean the equipment support service required under this Term Sheet. Support Services include, but are not limited to, repairs to the equipment; providing telephone and/or online support concerning the installation and use of the equipment; training in the installation and use of the equipment; and detection, warning and correction of issues related to the equipment.

        f.   "Purchase Order" means the accompanying Purchase Order and any other corresponding documents, such as an Equipment Maintenance Agreement submitted by Contractor to City ("Corresponding Documents") in response to a request for quote by City for the Equipment Maintenance Services described in the Purchase Order. The Purchase Order is issued by City to Contractor pursuant to a Technology Marketplace Agreement, which agreement is identified in the Purchase Order. The Purchase Order and all Corresponding Documents are incorporated into this Term Sheet as though fully set forth herein.

        Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the City. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the City, unless otherwise indicated by the context.

2.   Term of the Term Sheet. The term of this Term Sheet shall reflect the term of the Equipment Maintenance Services set forth in the accompanying Purchase Order and Corresponding Documents, unless earlier terminated in accordance with the provisions of this Term Sheet or the applicable Technology Marketplace Agreement.

3.   Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of

its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

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

5.   Incorporation of Recitals. The matters recited above are hereby incorporated into and made part of this Term Sheet.

6.   Qualified Personnel. Work under this Term Sheet shall be performed only be competent personnel under the supervision of and/or in the employment of Contractor (or Contractor's authorized subcontractors). Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall assign adequate personnel resources to provide the level of service within the response times specified in this Term Sheet.

7.   Termination.

        a.   **Termination for Cause.** In the event Contractor fails to perform any of its obligations under this Term Sheet, this Term Sheet may be terminated and all of Contractor's rights hereunder ended. Termination will be effective after ten days written notice to Contractor. No new work will be undertaken after the date of receipt of any notice of termination, or five days after the date of the notice, whichever is earlier. In the event of such termination, Contractor will be paid for those services performed under this Term Sheet to the satisfaction of the City, up to the date of termination. However, City may offset from any such amounts due Contractor any costs City has or will incur due to Contractor's non-performance. Any such offset by City will not constitute waiver of any other remedies City may have against Contractor for financial injury or otherwise.

        b.   **Termination for Convenience**. City shall have the option, in its sole discretion, to terminate this Term Sheet, at any time during the term thereof, for City's convenience and without cause by giving Contractor thirty days written notice of such termination. In the event of such termination, Contractor will be paid for those services performed, pursuant to this Term Sheet, to the satisfaction of the City up to the date of termination. In no event will City be liable for costs incurred by Contractor after receipt of notice of termination. Such non-recoverable costs include, but are not limited to, anticipated profits on this Term Sheet, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not authorized or reasonable under this section.

        c.   **Obligations upon Termination.** Upon termination of this Term Sheet, Contractor will submit an invoice to City for an amount which represents the value of its work or services actually performed prior to the effective date of termination for which Contractor has not previously been compensated, except that with respect to reimbursement for Contractor's services, in no event will the compensation paid for the month in which termination occurs be greater than the scheduled monthly fee multiplied by a fraction, the numerator of which will be the days in the month elapsed prior to the termination and the denominator of which shall be 31. Upon approval and payment of this invoice by City, City shall be under no further obligation to Contractor monetarily or otherwise.

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

9.   Non-Waiver of Rights   12.   Entire Agreement

8.   Notices to Parties. Unless otherwise indicated elsewhere in this Term Sheet, all written communications sent by the Parties may be by U.S. mail, e-mail or fax, and shall be addressed as set forth in the accompanying Purchase Order and/or Corresponding Documents.

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

9.   Non-Waiver of Rights. The waiver by either Party of any breach by either Party of any term, covenant or conditions hereof shall not operate as a waiver of any subsequent breach of the same or any other term, covenant or condition hereof.

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

11.   Modification of Term Sheet. This Term Sheet may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as the applicable Technology Marketplace Agreement.

12.   Order of Precedence. This Term Sheet may be modified only as provided in Section 11, "Modification of Term Sheet." Should the terms of this Term Sheet conflict with the Purchase Order, Corresponding Documents and/or the Technology Marketplace Agreement into which this Term Sheet is hereby incorporated, the terms of the Technology Marketplace Agreement shall control, followed by this Term Sheet shall control.

13.   Exhibits.

1: Technology Marketplace Agreements

Exhibit 1
Technology Marketplace Agreements

Contractor	Agreement ID		Contractor	Agreement ID
Actnet Advanced Technology Corporation	1000012952		CCS Global Tech	1000012601
	1000012953		CDW Government	1000012602
	1000012954		Central Computers	1000012603
	1000012955		Computerland	1000012604
Beta Nineties Computer, Inc.	1000012956		ConvergeOne	1000012605
	1000012957		Cornerstone JV	1000012606
Diamond Technology, Inc.	1000012958		DPP Tech	1000012607
	1000012959		Dynamic Systems	1000012608
	1000012960		En Pointe	1000012609
Exigy, Inc.	1000012961		Intervision	1000012610
	1000012962		Presidio	1000012611
	1000012963		Robert Half	1000012612
Farallon Geographics, Inc.	1000012964		Slalom	1000012613
	1000012965		Softnet	1000012614
Five Paths, LLC	1000012966		Stellar	1000012615
	1000012968		Variedy	1000012616
	1000012969		World Wide Technology	1000012617
GenSigma LLC	1000012970		X Tech JV	1000012618
	1000012971		Zones	1000012619
Parthex Tech, Inc.	1000012972		Ameritech	1000012721
Spiral Scout, LLC	1000012973		BridgeMicro	1000012722
	1000012974		Delta-CM Pros JV	1000012723
Studio 151	1000012975		Elyon	1000012724
T&S Trading Co.	1000012976		Ipso Facto	1000012725
	1000012977		LearnIT	1000012726
	1000012978		NuSpective	1000012727
Toptek Micro Center, Inc.	1000012980		Pantheon	1000012728
Two Rivers, Corp.	1000012981		Staples	1000012729
Xterra Solutions Inc.	1000012982		Vox	1000012730
	1000012983			
	1000012984			

City and County of San Francisco Technology Marketplace
Software as a Service Term Sheet

This Software as a Service ("SaaS") Term Sheet ("Term Sheet") is attached and incorporated as though fully set forth therein, to each Purchase Order for the purchase of Software as a Service hereby issued by the City and County of San Francisco ("City") pursuant to any of the Technology Marketplace Agreements identified in Exhibit 1 ("Technology Marketplace Agreements"), heretofore entered into by and between the City and those Contractors selected by City pursuant to a Request for Proposals 99400 issued by City on or about July 2018.

Article 1   Definitions

The following definitions apply to this Agreement:

1.1   "Acceptance" means notice from the City to Contractor that the SaaS Application meets the specifications and requirements contained in the Documentation and the accompanying Purchase Order and Corresponding Documents.

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

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

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

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

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

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

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

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

1.10   "Confidential Information" means confidential City information including, but not limited to, personally-identifiable information (PII), protected health information, or individual financial information (collectively, "Proprietary or Confidential Information") that is

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

1.11   "Contractor" shall mean the Contractor with whom the City has entered into the Technology Marketplace Agreement identified in Exhibit 1 and the entity to whom a Purchase Order is hereby issued for the purchase of SaaS.

1.12   "Contractor Project Manager" means the individual specified by Contractor pursuant to Section 4.2.1 hereof, as the Project Manager authorized to administer this Term Sheet on Contractor's behalf.

1.13   "Contractor's Website" means the Website that provides Authorized User access to the SaaS Application Services.

1.14   "Data Breach" means any access, destruction, loss, theft, use, modification or disclosure of City Data by an unauthorized party or that is in violation of this Term Sheet terms and/or applicable local, state or federal law.

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

1.16   "Deliverables" means Contractor' work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Services detailed in the accompanying Purchase Order, Corresponding Documents and this Term Sheet, including without limitation, the work product described in the "SaaS Implementation and Training Services," if any, attached to the accompanying Purchase Order.

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

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

1.19   "End Users" means any Authorized User who accesses the Contractor's Website and uses the SaaS Application and Services.

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

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

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

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

1.24   "Performance Credit" means credit, if any, due to City by Contractor with regard to Contractor's service level obligations in the accompanying Purchase Order, Corresponding Documents and/or Exhibit 3 (Service Level Obligations: Minimum Requirements), as the case may be.

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

1.26   "Purchase Order" means the accompanying Purchase Order and any other corresponding documents, such as a SaaS Agreement submitted by Contractor to City ("Corresponding Documents") in response to a request for quote by City for the SaaS described in the Purchase Order. The Purchase Order is issued by City to Contractor pursuant to a Technology Marketplace Agreement, which agreement is identified in the Purchase Order. The Purchase Order and all Corresponding Documents are incorporated into this Term Sheet as though fully set forth herein.

1.27   "SaaS" means Software as a Service.

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

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

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

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

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

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

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

1.35   "SaaS Software" means those SaaS licensed programs and associated documentation licensed to City by Contractor as listed in this Term Sheet and Exhibits, and any modification or Upgrades or modifications to the program(s) provided under this Agreement.

1.36   "SaaS Software Error" means any failure of SaaS Software to conform in all material respects to the requirements of this Term Sheet or Contractor's published specifications.

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

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

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

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

1.41   "Services" means the work performed by Contractor pursuant to the accompanying Purchase Order, Corresponding Documents and this Term Sheet, including all

services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Term Sheet.

1.42 "Software" means the SaaS Software and Contractor provided Third-Party Software, if any. All Software, revisions and versions provided by Contractor shall be subject to the terms and conditions of this Term Sheet, including any amendments thereto.

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

1.44 "Term Sheet" means this document, the accompanying Purchase Order, all attached exhibits, and all applicable City Ordinances and Mandatory City Requirements in the Technology Marketplace Agreement between City and Contractor that are specifically incorporated into this Term Sheet by reference as provided herein.

1.45 "Third-Party Software" means the software described in the accompanying Purchase Order.

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

Article 2 Term of the Term Sheet

2.1 **Term.** The term of this Term Sheet shall reflect the term of the SaaS set forth in the accompanying Purchase Order, unless earlier terminated in accordance with the provisions of this Term Sheet or the applicable Technology Marketplace Agreement.

Article 3 Reserved (Financial Matters)

Article 4 SaaS Services and Resources

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

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

4.1.2 **Authorized APIs.** City shall be permitted to access and use Contractor's SaaS Application Program Interfaces (APIs) when commercially available to develop and

modify, as necessary, macros and user interfaces for use with any existing or future City systems and infrastructure. For purposes of this Term Sheet, such development shall be deemed an authorized modification but will not be supported by Contractor unless provided for in this Term Sheet. Functionality and compatibility of City developed macros will be sole responsibility of City. Any such macros or user interfaces developed by City shall become the property of City. All flat-file exchanges will be over an encrypted file transport service (ftps/vsftpd/scp/sftp) to a secure private ftp site.

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

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

  4.2.2 **Services Contractor Agrees to Perform**. During the Term of this Term Sheet, Contractor will perform all of the services set forth in the accompanying Purchase Order and Corresponding Documents and the following:

   (a) Provide all hardware, software and other equipment at Contractor's hosting site as described in the accompanying Purchase Order and Corresponding Documents (and any applicable disaster recovery site) as necessary to host and deliver the SaaS Application and Services described in the Purchase Order and Corresponding Documents.

   (b) Provide Authorized Users access to the SaaS Application and Services pursuant to the grant of access in Section 4.1.

   (c) Meet or exceed the Service Level Obligations described in Exhibit 3. It is mutually agreed and understood, that the Service Level Obligations will be applied beginning on the first full calendar month following the Acceptance of the SaaS Application and Services.

   (d) Maintain the correct operation of the SaaS Application and Services, Contractor's Website, and provide SaaS Maintenance Services and support services as specified in this Term Sheet.

   (e) Provide telephone support for Authorized Users in the operation of the SaaS Application and Services.

   (f) Provide Disaster Recovery Services that meets or exceeds what is described in Section 14.4 and Exhibit 4.

4.3   **Acceptance Testing; Document Delivery; Training.**

  4.3.1 After City has obtained access to the SaaS Application and Services, and subsequent to each SaaS Software version upgrade, revision and patch, City and Contractor shall conduct user acceptance testing as outlined in the accompanying Purchase Order and Corresponding Documents to verify that the SaaS Application and Services substantially conform to the specifications and City's requirements contained therein. In the event that the City determines that the SaaS Services do not meet such specifications, the City shall notify the Contractor in writing, and Contractor shall modify or correct the SaaS Services so that it satisfies the Acceptance criteria. The date of Acceptance will be that date upon which City provides Contractor with written notice of satisfactory completion of Acceptance testing. If City notifies Contractor after the Acceptance Testing Period that the SaaS Services do not meet the Acceptance criteria outlined in and the accompanying Purchase Order and Corresponding Documents, then City shall be entitled to terminate this Term Sheet in accordance with the procedures specified in Article 8 herein, and shall be entitled to a full refund of any fees paid as part of this Term Sheet prior to termination.

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

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

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

<center>

Article 5 Indemnity and Warranties

</center>

  5.1 **Indemnification**

  5.1.1 **General Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Term Sheet, including but not limited to, any: (i) injury to

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

        5.1.2   **Infringement Indemnification.** If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the SaaS Application and Services infringes a patent, copyright, or any right of a third-party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise, provided, however, that Contractor shall not agree to any injunctive relief or settlement that obligates the City to perform any obligation, make an admission of guilt, fault or culpability or incur any expense, without City's prior written consent, which shall not be unreasonably withheld or delayed. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the SaaS Application and/or Services constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement, provided, however, that Contractor shall not agree to any injunctive relief or settlement that obligates the City to perform any obligation, make an admission of guilt, fault or culpability or incur any expense, without City's prior written consent, which shall not be unreasonably withheld or delayed. In the event a final injunction is obtained against City's use of the SaaS Application and Services by reason of Infringement, or in Contractor's opinion City's use of the SaaS Application and Services is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the SaaS Application and Services as contemplated hereunder, (b) replace the SaaS Application and Services with a non-infringing, functionally equivalent substitute SaaS Application and Services, or (c) suitably modify the SaaS Application and Services to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the SaaS Application and Services. If none of these options is reasonably available to Contractor, then the applicable Purchase Order and Corresponding Documents or relevant part of such Purchase Order and Corresponding Documents may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid under this Term Sheet for the license of such infringing SaaS Application and/or Services. Any unauthorized modification or attempted modification of the SaaS Application and Services by City or any failure by City to

implement any improvements or updates to the SaaS Application and Services, as supplied by Contractor, shall void this indemnity unless City has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on City's use or combination of the SaaS Application and Services with products or data of the type for which the SaaS Application and Services was neither designed nor intended to be used.

    5.2   **Warranties of Contractor**

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

        5.2.2   **Warranty of Performance.** Contractor warrants that when fully implemented, the SaaS Application to be configured and provided under this Term Sheet shall perform in accordance with the specifications applicable thereto. With respect to all Services to be performed by Contractor under this Term Sheet, Contractor warrants that it will use reasonable care and skill. All services shall be performed in a professional, competent and timely manner by Contractor personnel appropriately qualified and trained to perform such services. In the event of a breach of the foregoing warranty relating to any service under this Term Sheet within twelve (12) months from the date of provision such services, Contractor shall, at its sole cost and expense, re-perform such services.

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

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

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

        5.2.6   **Warranty of Suitability for Intended Purpose.** Contractor warrants that the SaaS Application and Services will be suitable for the intended purpose of the City.

Article 6   Reserved (Liability of the Parties)

Article 7   Reserved (Payment of Taxes)

Article 8   Termination; Disposition of Content; Survival

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

8.1.1   To immediately terminate this Term Sheet if Contractor commits any breach of this Term Sheet or default (see Section 8.2 below) and fails to remedy such breach or default within ten (10) days after written notice by City of such breach (10-day cure period), in which event, Contractor shall refund to City all amounts paid under this Term Sheet for the SaaS Application and/or Services in the same manner as if City ceased to use the SaaS Application due to infringement under Section 5.1.2. At City's sole election, the 10-day cure period will ***not*** apply to termination for data breach and/or breach of confidentiality; or

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

8.2   Each of the following shall constitute an immediate event of default ("Event of Default") under this Term Sheet:

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

Article 5	Insurance; Indemnity and Warranties	13.2	Proprietary or Confidential Information

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

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

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

8.2.5   On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Term Sheet

or to seek specific performance of all or any part of this Term Sheet. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Term Sheet or any other Term Sheet between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Term Sheet; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Term Sheet by reference, or into any other Term Sheet with the City.

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

8.4 **Transition Services and Disposition of City Data.** Notwithstanding anything to the contract set forth in the Purchase Order and Corresponding Documents, upon expiration or termination of the SaaS Services under this Term Sheet:

8.4.1 Contractor may immediately discontinue the SaaS Services and City shall immediately cease accessing the SaaS Application and Services. Contractor shall within five (5) calendar days of the expiration or termination of the SaaS Services return City's data in an agreed-upon machine readable format. This provision shall also apply to all City Data that is in the possession of subcontractors, agents or auditors of Contractor. Such data transfer shall be done at no cost to the City. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within thirty (30) calendar days clear, purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five (5) calendar days that such clear or purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

8.4.2 Contractor shall provide to City and/or Successor Service Provider assistance requested by City to effect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider. During the transition period, SaaS and City Data access shall continue to be made available to City without alteration. Such Transition Services

shall be provided on a time and materials basis if the City opts to return to its own servers or City chooses a Successor Service Provider. Transition costs may include: (a) developing a plan for the orderly transition of the terminated SaaS Services from Contractor to Successor Service Provider; (b) if required, transferring the City Data to Successor Service Provider; (c) using commercially reasonable efforts to assist City in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Contractor in connection with the Services; (d) using commercially reasonable efforts to make available to City, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Contractor in connection with the SaaS Services; and, (e) such other activities upon which the Parties may agree. Notwithstanding the foregoing, should City terminate this Term Sheet due to Contractor's material breach, City may elect to use the Services for a period of no greater than six (6) months from the date of termination at a reduced rate of twenty (20%) percent off of the then-current Services Fees for the terminated Services. All applicable terms and conditions of this Term Sheet shall apply to the Transition Services. This Section shall survive the termination of this Term Sheet.

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

8.6 **Notice of Default.** Any notice of default must be sent by registered mail to the address set forth in Section 11.1, "Notices to the Parties."

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

8.8 **Survival.**

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

Article 5	Insurance; Indemnity and Warranties		11.5	Term Sheet Made in California; Venue
8.4	Transition Services and Disposition of Content		11.6	Entire Agreement
8.7	Non-Waiver of Rights		13.2.1	Proprietary or Confidential Information of City
11.2	Compliance with Laws		13.2.4	Litigation Holds
11.3	Severability		13.2.5	Notification of Legal Requests

Article 9   Rights In Deliverables

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

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

Article 10   Reserved (Additional Requirements Incorporated by Reference)

Article 11   General Provisions

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

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

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

11.4   **Incorporation of Recitals**. The matters recited above are hereby incorporated into and made part of this Term Sheet.

11.5   **Term Sheet Made in California; Venue.** The formation, interpretation and performance of this Term Sheet shall be governed by the laws of the State of California.

Venue for all litigation relative to the formation, interpretation and performance of this Term Sheet shall be in San Francisco.

11.6 **Order of Precedence.** This Term Sheet may be modified only as provided in Section 11.1, "Modification of this Term Sheet." Should the terms of this Term Sheet conflict with the Purchase Order, Corresponding Documents and/or the Technology Marketplace Agreement into which this Term Sheet is hereby incorporated, the terms of the Technology Marketplace Agreement shall control, followed by this Term Sheet shall control.

11.7 **Notices to the Parties.** Unless otherwise indicated in this Term Sheet, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as set forth in the accompanying Purchase Order and Corresponding Documents.

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

Article 12   Reserved (Department Specific Terms)

Article 13   Data and Security

13.1 **City Data.**

13.1.1 **Ownership of City Data.** Notwithstanding anything to the contract set forth in the Purchase Order and Corresponding Documents, the Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City. The Contractor warrants that the SaaS Application does not, without express written approval by City, maintain, store, or export the City Data using a database structure, data model, entity relationship diagram or equivalent.

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

13.1.3 **Access to and Extraction of City Data.** City shall have access to City Data 24-hours a day, 7 days a week. The SaaS Application shall be capable of creating a digital, reusable copy of the City Data, in whole and in parts, as a platform independent and machine-readable file. Such file formats include, without limitation, plain text files such as comma-delimited tables, extensible markup language, and javascript object notation. City Data that is stored in binary formats, including without limitation portable document format, JPEG, and

portable network graphics files, shall instead be reproducible in the same format in which it was loaded into the SaaS Application. This reusable copy must be made available in a publicly documented and non-proprietary format, with a clearly-defined data structure and a data dictionary for all terms of art contained in the data. For purposes of this section, non-proprietary formats include formats for which royalty-free codecs are available to End Users. Contractor warrants that City shall be able to extract City Data from the SaaS Application on demand, but no later than 24-hours of City's request, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees to Contractor).

13.1.4 **Backup and Recovery of City Data.** As a part of the SaaS Services, Contractor is responsible for maintaining a backup of City Data and for an orderly and timely recovery of such data in the event of data corruption or interruption of the SaaS Services. Unless otherwise described in the accompanying Purchase Order and Corresponding Documents, Contractor shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Term Sheet and as outlined in the accompanying Purchase Order, Corresponding Documents and/or Exhibit 3, as the case may be, and maintaining the security of City Data as further described herein. Contractor's backup of City Data shall not be considered in calculating storage used by City.

13.1.5 **Data Breach; Loss of City Data**. Notwithstanding anything to the contract set forth in the Purchase Order and Corresponding Documents, in the event of any Data Breach, act, SaaS Software Error, omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of City Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of City Data, Contractor shall, as applicable:

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

(i)   the nature of the unauthorized access, use or disclosure;

(ii)   the Confidential Information accessed, used or disclosed;

(iii)   the person(s) who accessed, used, disclosed and/or received protected information (if known);

(iv)   what Contractor has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure, and

(v)   what corrective action Contractor has taken or will take to prevent future unauthorized access, use or disclosure.

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

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

(i)   Immediately preserve any potential forensic evidence relating to the breach, and remedy the breach as quickly as circumstances permit;

(ii)   Promptly (within 2 business days) designate a contact person to whom the City will direct inquiries, and who will communicate Contractor responses to City inquiries;

(iii)   As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by the City, and undertake appropriate response activities;

(iv)   Provide status reports to the City on Data Breach response activities, either on a daily basis or a frequency approved by the City;

(v)   Make all reasonable efforts to assist and cooperate with the City in its Breach response efforts;

(vi)   Ensure that knowledgeable Contractor staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach; and

(vii)   Cooperate with City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by City.

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

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

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

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

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

(i)   Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain (at the City's election) information that may include: name and contact information of Contractor's (or City's)

representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor.

(j)   Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including without limitation any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

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

13.2   **Proprietary or Confidential Information**

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

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

13.2.3 **Nondisclosure.** Contractor agrees and acknowledges that it shall have no proprietary interest in any proprietary or Confidential Information and will not disclose, communicate or publish the nature or content of such information to any person or entity, nor use, except in connection with the performance of its obligations under this Term Sheet or as otherwise authorized in writing by City, any of the Confidential Information it produces, receives, acquires or obtains from City. Contractor shall take all necessary steps to ensure that the Confidential Information is securely maintained. Contractor's obligations set forth herein shall survive the termination or expiration of this Term Sheet. In the event Contractor becomes

legally compelled to disclose any of the Confidential Information, it shall provide City with prompt notice thereof and shall not divulge any information until the City has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by City are unsuccessful, or City otherwise waives its right to seek such remedies, Contractor shall disclose only that portion of the Confidential Information that it is legally required to disclose.

13.2.4 **Litigation Holds.** Contractor shall retain and preserve City Data in accordance with the City's instructions and requests, including without limitation any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

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

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

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

13.2.8 **Surrender of Confidential Information upon Termination**. Upon termination of this Term Sheet, including but not limited to expiration of the term, early termination or termination for convenience, Contractor shall, within the number of calendar days specified by City from the date of termination, return to City any and all Confidential Information received from the City, or created or received by Contractor on behalf of the City, which are in Contractor's possession, custody, or control. The return of Confidential Information to City shall follow the timeframe and procedure described further in this Term Sheet (Article 8).

13.2.9 **Data Security.** To prevent unauthorized access or "hacking" of City Data, Contractor shall at all times during the Term provide and maintain up-to-date security with respect to (a) the Services, (b) the Contractor's Website, (c) Contractor's physical facilities, and

(d) Contractor's networks. Contractor shall provide security for its networks and all Internet connections consistent with best practices observed by well-managed SaaSs working in the financial services industry, and shall promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. Contractor will maintain appropriate safeguards to restrict access to City's Data to those employees, agents or service providers of Contractor who need the information to carry out the purposes for which it was disclosed to Contractor. For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., most current industry standard encryption for transport and storage, intrusion prevention/detection or similar barriers) and secure authentication (e.g., password protected) access to the City's Confidential Information and hosted City Data. For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of City Data. City Data classified as Confidential Information shall be encrypted at rest and in transit with controlled access. Contractor shall also establish and maintain any additional physical, electronic, administrative, technical and procedural controls and safeguards to protect City Data that are no less rigorous than accepted industry practices (including, as periodically amended or updated, the International Organization for Standardization's standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management, NIST Special Publication 800-53 Revision 4 or its successor, NIST Special Publication 800-18 or its successor, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards, or other applicable industry standards for information security), and shall ensure that all such controls and safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Term Sheet. Contractor warrants to the City compliance with the California Information Practices Act (Civil Code §§ 1798 et seq) (as periodically amended or updated).

13.2.10   **Data Privacy and Information Security Program.** Without limiting Contractor's obligation of confidentiality as further described herein, Contractor shall establish and maintain a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (i) ensure the security and confidentiality of the City Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the City Data; (iii) protect against unauthorized disclosure, access to, or use of the City Data; (iv) ensure the proper disposal of City Data; and, (v) ensure that all of Contractor's employees, agents, and subcontractors, if any, comply with all of the foregoing.

13.2.11   **City's Right to Termination for Deficiencies.** City reserves the right, at its sole election, to immediately terminate this Term Sheet, without limitation and without liability, if City reasonably determines that Contractor fails or has failed to meet its obligations under this Article 13.

13.2.12   **Data Transmission.** The Contractor shall ensure that all electronic transmission or exchange of system and application data with City and/or any other parties expressly designated by City shall take place via encrypted secure means (e.g. HTTPS or SFTP or most current industry standard established by NIST). The Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the Term Sheet. Data shall not be distributed, repurposed or shared across other applications,

environments, or business units of the Contractor. The Contractor shall ensure that no City Data of any kind shall be copied, modified, destroyed, deleted, transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by City. Contractor is prohibited from accessing City Data from outside the continental United States.

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

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

13.3.2 **Audit of Contractor's Policies.** Contractor agrees to make its policies, procedures and practices regarding Data Security available to City, if needed, and agrees that City reserves the rights, including, but not limited to, making a site visit, scanning for malicious codes, and hiring a third-party to perform a security audit if City determines that the Audit Report is unsatisfactory.

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

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

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

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

13.4.2   Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as service providers

(https://www.pcisecuritystandards.org/index.shtml). Compliance with the PCI DSS shall be achieved through a third-party audit process. The Contractor shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

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

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

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

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

Article 14   Force Majeure

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

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

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

14.4   **Disaster Recovery.** In the event of a disaster, as defined below, Contractor shall be provide disaster recovery services in accordance with the provisions of the disaster recovery plan attached as Exhibit 4 hereto, or as otherwise set forth in this Term Sheet and attached Exhibits. Notwithstanding Section 14.1, a Force Majeure Event shall not excuse

Contractor of its obligations for performing disaster recovery services as provided in this Section. In the event that a disaster occurs and Contractor fails to restore the hosting services within 24 hours of the initial disruption to Services, City may, in its discretion, deem such actions to be a material default by Contractor incapable of cure, and City may immediately terminate this Term Sheet. For purposes of this Term Sheet, a "disaster" shall mean an interruption in the hosting services or the inability of Contractor to provide City with the SaaS Application and hosting services for any reason that could not be remedied by relocating the SaaS Application and hosting services to a different physical location outside the proximity of its primary Data Center.

Article 15   Exhibits

15.1   **Additional Exhibits.** The following exhibits are hereby attached and incorporated into this Term Sheet as though fully set forth herein and together form the complete Term Sheet between the Parties:

Exhibits:

1. Technology Marketplace Agreements
2. SaaS Application & Hosting Services: Minimum Requirements
3. Service Level Obligations: Minimum Requirements
4. Disaster Recovery Plan: Minimum Requirements

Exhibit 1
Technology Marketplace Agreements

Prime Contractor	Prime Contract ID
Actnet Advanced Technology Corporation	1000012952
	1000012953
	1000012954
	1000012955
Beta Nineties Computer, Inc.	1000012956
	1000012957
Diamond Technology, Inc.	1000012958
	1000012959
	1000012960
Exigy, Inc.	1000012961
	1000012962
	1000012963
Farallon Geographics, Inc.	1000012964
	1000012965
Five Paths, LLC	1000012966
	1000012968
	1000012969
GenSigma LLC	1000012970
	1000012971
Parthex Tech, Inc.	1000012972
Spiral Scout, LLC	1000012973
	1000012974
Studio 151	1000012975
T&S Trading Co.	1000012976
	1000012977
	1000012978
Toptek Micro Center, Inc.	1000012980
Two Rivers, Corp.	1000012981
Xterra Solutions Inc.	1000012982
	1000012983
	1000012984

Prime Contractor	Prime Contract ID
CCS Global Tech	1000012601
CDW Government	1000012602
Central Computers	1000012603
Computerland	1000012604
ConvergeOne	1000012605
Cornerstone JV	1000012606
DPP Tech	1000012607
Dynamic Systems	1000012608
En Pointe	1000012609
Intervision	1000012610
Presidio	1000012611
Robert Half	1000012612
Slalom	1000012613
Softnet	1000012614
Stellar	1000012615
Variedy	1000012616
World Wide Technology	1000012617
X Tech JV	1000012618
Zones	1000012619
Ameritech	1000012721
BridgeMicro	1000012722
Delta-CM Pros JV	1000012723
Elyon	1000012724
Ipso Facto	1000012725
LearnIT	1000012726
NuSpective	1000012727
Pantheon	1000012728
Staples	1000012729
Vox	1000012730

Exhibit 2
SaaS Application & Hosting Services: Minimum Requirements

The following represent minimum requirements that Contractor shall meet or exceed with regard to its SaaS Application & Hosting Services.

I.   **Description of the SaaS Application and Hosted Services**
II.   **SaaS Data Centers**
III.   **SaaS Maintenance Services.**
IV.   **City Responsibilities**
V.   **Technical Support & Training**

I.   **Description of the SaaS Application and Hosted Services:** "SaaS Application and Hosted Services" are set forth in the accompanying Purchase Order and Corresponding Documents.

  A.   **Software:** Use of Contractor's Software operating on hosted equipment located at Contractor's facility and/or any Data Center as further outlined under Section II (SaaS Data Centers) of this Exhibit 2.

  B.   **Third-Party Software:**

        1.   Providing certain third-party software required to operate the SaaS Software and other bundled third-party software packages required to support the operation of the SaaS Software.

        2.   Inclusion of regular Software and Contractor-supplied third-party software updates, patches and fixes as scheduled by Contractor.

  C.   **Remote Software:** Contractor shall provide access to and use of a remote software tool for City management of Authorized Users, access rights and other similar role-based controls as they pertain to the SaaS Services. Method will be published through Contractor portal and be made available to Authorized Users with elevated privileges.

  D.   **Back-Up of City's Data:**

        1.   Contractor shall provide up to thirty-six (36) months of on-line hourly data retention for SaaS Software operation and functionality.

        2.   Contractor shall provide incremental City Data backups at a minimum of every four (4) hours to an off-site location other than the primary hosting center.

        3.   Contractor shall provide weekly, off-site backups with a duration that matches the agreed-upon backup schedule and retention to a location other than the primary hosting center. Off-site backups to include previous eight (8) weeks.

E. **SaaS Environments:** The SaaS Application and Hosted Services shall be hosted in a certified and secure Tier-3 data hosting center.

     1.   A single Back-up Environment available as needed to serve as the backup or "failover" environment for the SaaS and Hosted Services

     2.   A single test environment available to the City and Contractor for the evaluation and eventual promotion of SaaS Software updates, patches, fixes or otherwise deemed tests. Test Environment shall perform at 50% or better of production environment.

F. **Reporting:** Contractor shall provide electronic notification within 2 hours of discovery and subsequent monthly reporting of any incidents or breaches that had occurred within the environment or to the hosted application. In the event of a breach, Contractor shall follow the procedures set forth in Section 13.1.5 of the Term Sheet.

G. **Availability of SaaS Services:** Contractor (or its Hosting Service contractor) shall host the SaaS Services on computers owned or controlled by the Contractor (or its contractor) and shall provide the City with access to both a production environment with SaaS Application and data and a test environment with SaaS Application via Internet-access to use according to the terms herein.

     1. **Hosted System Uptime:** Other than Scheduled SaaS Maintenance Services as outlined in Section III, emergency maintenance described below, Force Majeure as described in the Term Sheet and lack of Internet availability as described below, Contractor shall provide uptime to the SaaS Application and Hosted Service to achieve a 99.9% Service Level Availability.

     2. **Scheduled SaaS Maintenance**

     A.   Contractor shall conduct Scheduled SaaS Maintenance during the following hours: Saturdays between 12 AM (Pacific Time) and 8 AM (Pacific Time), with the same exclusions noted in subsection 1, above.

     B.   Scheduled SaaS Maintenance shall not exceed an average of 4 hours per month over a twelve (12) month period except for major scheduled upgrades.

     3. **Unscheduled SaaS Maintenance.** Contractor shall use commercially reasonable efforts to prevent more than one (1) hour of continuous down time during business hours in any month for which unscheduled SaaS maintenance is required. If Contractor fails to meet this obligation for a period of three successive calendar months, Contractor shall furnish City with a Performance Credit in the amount of 10% of the Services Fees (as calculated on a monthly basis for the reporting month).

     4. **Emergency Maintenance**. If Force Majeure Events or emergencies arise or continue, Contractor shall be entitled to take any actions that Contractor, in good faith, determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the SaaS systems or

the SaaS Software. Such emergency maintenance may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the SaaS Software by City is made available. Contractor shall endeavor to provide advance written notice of such emergency maintenance to City as soon as is reasonably possible.

     5.   **Notice of Unavailability:** In the event there will be more than thirty (30) minutes down time of any SaaS or Hosted Service components for any reason, including but not limited to, Scheduled SaaS Maintenance or emergency maintenance, Contractor shall provide notice to users by posting a web page that indicates that the site is temporarily unavailable and to please come back later. Contractor shall also provide advanced e-mail notice to the email(s) to which the license(s) are registered which will include at least a brief description of the reason for the down time and an estimate of the time when City can expect the site to be up and available.

     H.   **Changes in Functionality.** During the term of this Term Sheet, Contractor shall not reduce or eliminate functionality in SaaS Services. Where Contractor has reduced or eliminated functionality in SaaS Services, City, in its sole election, shall: (i) have, in addition to any other rights and remedies under this Term Sheet or at law, the right to immediately terminate this Term Sheet and be entitled to a return of any prepaid fees; or, (ii) determine the value of the reduced or eliminated functionality and Contractor shall immediately adjust the Services fees accordingly on a prospective basis. Where Contractor increases functionality in the SaaS Services, such functionality shall be provided to City without any increase in the Services fees.

II.   SaaS Data Centers

     A.   **Control:** The method and means of providing the Services shall be under the exclusive control, management, and supervision of Contractor, giving due consideration to the requests of City. Contractor, or any previously approved subcontractor, shall provide the Services (including data storage) solely from within the continental United States and on computing and data storage devices residing in the United States.

     B.   **Location:** The location of the approved Data Centers that will be used to host the SaaS Application will be clearly identified in the accompanying Purchase Order and Corresponding Documents. They shall include a Primary Tier 3 Data Center and a Back Up Tier 2 Data Center.

     C.   **Replacement Hosted Provider:** In the event Contractor changes the foregoing Hosted Provider, Contractor shall provide City with prior written notice of said change and disclose the name and location of the replacement Hosted Provider. The replacement Hosted Provider shall be a reputable Hosted Provider comparable to Contractor's current Hosted Provider, and said replacement Hosted Provider shall be located within the United States. If applicable, the replacement Hosted Provider shall perform a SSAE 16, SOC 1 and/or SOC 2, Type II Report and SOC 3 Audit Report at least annually, in accordance with Section 13.3 of this Term Sheet.

D.   **Notice of Change:** If the location of the Data Center used to host the SaaS Application is changed, Contractor shall provide City, upon written request by City of the accompanying Purchase Order and Corresponding Documents, Contractor, with written notice of said change at least sixty (60) days prior to any such change taking place. Contractor shall disclose the address of the new facility, which shall be within the United States. The Data Centers referenced above are subcontractors that must be approved by City.

E.   **Subcontractors.** Upon written request by City upon issuance of the accompanying Purchase Order and Corresponding Documents, Contractor shall not enter into any subcontracts for the performance of the Services, or assign or transfer any of its rights or obligations under this Term Sheet, without City's prior written consent and any attempt to do so shall be void and without further effect and shall be a material breach of this Term Sheet. Contractor's use of subcontractors shall not relieve Contractor of any of its duties or obligations under this Term Sheet.

III.   SaaS Maintenance Services.

A.   The SaaS Software maintained under this Term Sheet shall be the SaaS Software set forth in the accompanying Purchase Order and Corresponding Documents.

B.   The following SaaS Maintenance Services are included as part of this Term Sheet:

1.   Contractor Software Version Upgrades, Software Revisions and Patches. Contractor shall provide and implement ALL SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches to ensure: (a) that the functionality of the SaaS Software and SaaS Services, as described in the Documentation, is available to Authorized Users; (b) that the functionality of the SaaS Software and SaaS Services is in accordance with the representations and warranties set forth herein, including but not limited to, the SaaS Software and SaaS Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the Documentation; (c) that the Service Level Standards can be achieved; and (d) that the SaaS Software and SaaS Services work with the non-hosted browser version.

The following provisions shall also apply, but only if the City provides Contractor with a written request so naming each section below upon issuance of the accompanying Purchase Order and Corresponding Documents:

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

     ii.   Release of software revisions as defined will be conducted on a schedule as determined by Contractor. Contractor shall provide no less than a thirty (30) calendar day prior written notice of when any such revision is scheduled to be released. City will be granted a fifteen (15) calendar day evaluation window to review release documentation regarding software modules being impacted and general revision changes.

iii. After the evaluation period, Contractor shall conduct a deployment of the revision to the City test environment. The software deployment will be scheduled in writing five (5) calendar days prior to actual deployment activities. As part of the upgrade activities within the Test Environment, Contractor may provide nominal testing to ensure all systems are functional and the revision deployment was successful. Post deployment activities include an e-mail or portal post to serve as written notification that this service has been completed. City shall have forty-five (45) calendar day test window in which City has ability to test and raise issues with Contractor. Test environment deployment activities will be conducted during a mutually agreed-to time window and may not necessarily align with the production maintenance windows as described within this document.

iv. If a SaaS Severity Level 1 or Severity Level 2 Issue has been identified and appropriately triaged and classified by both Contractor and City during the test environment deployment test window, Contractor shall correct the SaaS Issue. The severity of a SaaS Issue will be initially defined by the City and confirmed by Contractor. Until the SaaS Issue has been resolved, the Severity Level may be raised or lowered based on Contractor's analysis of impact to business. If the SaaS Issue can be corrected and can be redeployed within the remainder of the deployment test window, City will have an additional five (5) testing days in which to evaluate and further test for the SaaS Issue resolution. If the SaaS Issue cannot be corrected within the remainder of the test window, Contractor will deploy immediately upon availability with as much notice as practicable. City will be allowed an additional five (5) testing days to evaluate the correction post the test window if desired.

v. If at any time during the testing window City identifies the presence of multiple SaaS Severity Level 1 or Severity Level 2 Issues that can be shown to materially impact City ability to continue testing, City may in writing elect to suspend testing until corrections for the SaaS Issues can be provided. Contractor will deploy corrections immediately upon availability with as much notice as practicable. Upon release of corrections, City will have five (5) calendar days to commence the testing within the then available remaining testing window.

vi. Unless exists outstanding circumstances as described here within, Contractor will promote revision from Test Environment to Production and Back-up environments after the provided test window has elapsed. The software promotion will be scheduled in writing five (5) calendar days prior to actual deployment activities.

As part of the promotion activities within the Production and Back-up environment, Contractor may provide nominal testing to ensure all systems are functional and the revision promotion was successful. Post promotion activities include an e-mail or portal post to serve as written notification that this service has been completed. At the point of e-mail or portal posting, the new revision will be considered "in production" and supported under the maintenance service terms described here within.

vii.   In support of such SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software patches, Contractor shall provide updated user technical documentation reflecting the SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software patches as soon as reasonably practical after the SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches have been released. Updated user technical documentation that corrects SaaS Software Errors or other minor discrepancies will be provided to Contractor's customers when available.

2.   Third-Party Software Revisions At its election, Contractor will provide periodic software revisions of Third-Party Software with the SaaS Software without further charge provided the following conditions are met: (i) the Third-Party Software revision corrects a malfunction or significant publicly disclosed security threat in the Third-Party Software that affects the operation or ability to provide secure use of the SaaS Software; and (ii) the Third-Party Software Revision has, in the opinion of Contractor, corrected malfunctions or a significant security threat identified in the Contractor Technology System and has not created any additional malfunctions; and (iii) the Third-Party Software revision is available to Contractor. City is responsible for obtaining and installing or requesting installation of the Third-Party Software revision if the Third-Party Software was not licensed to City by or through Contractor. Contractor Software revisions provided by Contractor are specifically limited to the Third-Party Software identified and set forth in the accompanying Purchase Order and Corresponding Documents.

C.   Response to SaaS Issues. Contractor shall provide verbal or written responses to SaaS Issues identified by City in an expeditious manner. Such responses shall be provided in accordance with the Target Response Times defined under Section V (Technical Support).

D.   SaaS Software Maintenance Acceptance Period. Unless otherwise agreed to by City on a case-by-case basis, for non-emergency maintenance City shall have, upon written request by City upon issuance of the accompanying Purchase Order and Corresponding Documents a twenty (20) business day period to test any maintenance changes prior to Contractor introducing such maintenance changes into production. If the City rejects, for good cause, any maintenance changes during the SaaS Software Maintenance Acceptance Period, Contractor shall not introduce such rejected maintenance changes into production. At the end of the Maintenance Acceptance Period, if City has not rejected the maintenance changes, the maintenance changes shall be deemed to be accepted by City and Contractor shall be entitled to introduce the maintenance changes into production.

E. **SaaS Hardware:** Contractor shall use commercially reasonable efforts to ensure that all hardware (including servers, routers, and other related equipment) on which the applications are deployed are attached to back-up power systems sufficient to maintain the site's availability for so long as any power outage could reasonably be expected to occur, based on the experience of Contractor at its deployment location and consistent with the Tier rating of the Data Center required under Section (I)(E) of this Exhibit.

IV. City Responsibilities

A. City shall provide Contractor with timely notification of any SaaS Issues by either of these methods:

1. **Contacting Contractor's Customer Support**; or

2. **By entering the problem on the Contractor Service Portal**

B. **Support for Problem Investigation**. City shall support all reasonable requests by Contractor as may be required in problem investigation and resolution.

C. **Designation of Point of Contact.** City shall assign an individual or individuals to serve as the designated contact(s) for all communication with Contractor during SaaS Issue investigation and resolution.

D. **Discovery of SaaS Software Errors**. Upon discovery of a SaaS Software Error, City agrees, if requested by Contractor, to submit to Contractor a listing of output and any other data that Contractor may require in order to reproduce the SaaS Software Error and the operating conditions under which the SaaS Software Error occurred or was discovered.

V. Technical Support

A. **24x7 Technical Support**: Authorized Users will make Technical Support requests by calling or emailing Contractor's Technical Support staff or by submitting a request via Contractor's customer service web portal. The Technical Support staff shall assign to the request the SaaS Severity Level (as defined herein) indicated by the requestor. SaaS Severity Level 1 and 2 items will be addressed 24/7/365. SaaS Severity Level 3 and 4 items will be addressed during the standard business hours of 6:00 a.m.-6:00 p.m. US Pacific Time.

SaaS Severity Level	*Minimum Target Response Time*
SaaS Severity Level 1: *Requires immediate attention– Critical production functionality is not available or a large number of users cannot access the SaaS Application. Causes a major business impact where service is lost or degraded and no workaround is available, preventing operation of the business.*	*Request Response Time: 30 minutes.* *Request Resolution Time Target: < 2 hours.* *Maximum Permitted Request Resolution Time: < 48 hours*
SaaS Severity Level 2: *Requires priority attention - Some important production functionality is not available, or a*	*Request Response Time: 1 hr.*

SaaS Severity Level	Minimum Target Response Time
small number of users cannot access the system. Causes significant business impact where service is lost or degraded and no workaround is available; however, the business can continue to operate in a limited fashion.	*Request Resolution Time Target: < 4 hours* *Maximum Permitted Request Resolution Time: < 96 hours*
SaaS Severity Level 3: *Requires attention –There is a problem or inconvenience. Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully and users are able to continue business operations.*	*Request Response Time: 1 hr.* *Request Resolution Time Target: < 6 hours* *Maximum Permitted Request Resolution Time: < 7 days*
SaaS Severity Level 4: *There is a problem or issue with no loss of service and no business impact.*	*Request Response Time: 1 hr.* *Request Resolution Time Target: < 24 hours* *Maximum Permitted Request Resolution Time: < 7 days*

Exhibit 3
Service Level Obligations: Minimum Requirements

The following represent minimum requirements that Contractor shall meet or exceed with regard to its Service Level Obligations.

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

B.   Service Levels.

1.   Availability Service Level:

  i.   Definitions:

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

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

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

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

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

    b.   Performance Credit.

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

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

2.   Response Time Service Level.

  a.   Definition(s).

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

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

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

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

        a.   **Calculation.** ((Total Transactions – Total Transactions failing Standard) / Total Transactions) * 100 = Percentage Response Time (as calculated by rounding to the second decimal point).

        b.   **Performance Credit**.

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

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

3.   **Technical Support Problem Response Service Level.**

    i.   **Definition**.

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

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

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

        b.   **Performance Credit.**

1) **SaaS Severity Level 1 – 2.**

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

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

2) **SaaS Severity Level 3 – 4.**

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

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

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

D.   **Failure to Meet Service Level Standards.** In the event Contractor does not meet a service level standard described herein, Contractor shall: (a) owe to City any applicable Performance Credit, as liquidated damages and not as a penalty; and, (b) use its best efforts to ensure that any unmet service level standard described herein is subsequently met. Notwithstanding the foregoing, Contractor will use its best efforts to minimize the impact or

duration of any outage, interruption, or degradation of Service. In no case shall City be required to notify Contractor that a Performance Credit is due as a condition of payment of the same.

E.   Termination for Material and Repeated Failures. City shall have, in addition to any other rights and remedies under this Term Sheet or at law, the right to immediately terminate this Term Sheet and be entitled to a return of any prepaid fees where Contractor fails to meet any service level standards described herein: (a) to such an extent that the City's ability, as solely determined by City, to use the SaaS Services is materially disrupted, Force Majeure events excepted; or, (b) for four (4) months out of any twelve (12) month period.

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

Exhibit 4
Disaster Recovery Plan: Minimum Requirements

The following represent minimum requirements that Contractor shall meet or exceed with regard to its Disaster Recovery Plan.

A. In the case of emergency or failure, this Disaster Recovery plan will be used to restore and continue service. Disaster Recovery is required when Contractor, in good faith, feels that an emergency failure jeopardizes its ability to meet its Service Level Obligations. Contractor shall use best efforts to restore operations at the same location or, at Contractor's discretion, a backup location. City acknowledges and agrees that such an event may result in partial or degraded service when restored. The pre-disaster/loss level of service shall be restored as soon as commercially reasonable.

B. **Restoration Targets:** Restoration of services timeframes will be defined and measured as Recovery Point Objectives and Recovery Time Objectives.

C. **Recovery Point Objective:** The Recovery Point Objective (RPO) is defined to be the maximum acceptable amount of data loss for which City may experience due to a temporary loss of hosted services and applications. Contractor shall deliver a maximum RPO of eight () hours based on incremental backups being made available between production and backup facilities and recovery, if any, of production data from DCUs.

D. **The Recovery Time Objective**: The Recovery Time Objective (RTO) is the maximum period of continuous time during which access to the SaaS Application shall not be available to the City. Contractor shall deliver a maximum RTO of forty-eight (48) hours for the SaaS Application.

E. **Data Synchronization:** Data Synchronization is the act of replicating or "mirroring" data from the Primary Environment to an off-site "backup" location (the Back-up Tier 2 Data Center). Data Synchronization is to be used in the case of a Disaster Recovery event to restore service. Data Synchronization must occur at a set interval of once per eight (8) hours for incremental data set changes and weekly for a full backup.

F. **Recovery Testing:** Contractor shall regularly test and exercise the Disaster Recovery Plan to ensure that the Tier 2 Back-up Data Center and Data Synchronization processes are functioning as expected. City shall allow for a maximum of a two (2) week runtime within the Back-Up Data Center before returning system operation to Primary Data Center.

G. **Backup and Recovery**: Backups of the production servers will occur every 8 hours, retained for 30 days, and stored locally at the primary data center on a separate managed storage device. These images will be used to recover servers if any issues occur. The backup images will periodically be replicated throughout the day to the secondary staged server environment for the purposes of site recovery. This replication will occur on a private protected fiber ring connecting the two data centers. In the event of a site disaster, a request can be made to the support desk and the most current server image set can be brought up as the production environment.

**City and County of San Francisco Technology Marketplace
Professional Services Term Sheet**

This Professional Services Term Sheet ("Term Sheet") is attached, and incorporated as though fully set forth therein, to each Purchase Order for Professional Services hereby issued by the City and County of San Francisco ("City") pursuant to any of the Technology Marketplace Agreements identified in Exhibit 1 ("Technology Marketplace Agreements"), heretofore entered into by and between the City and those Contractors selected by City pursuant to a Request for Proposals 99400 issued by City on or about July 2018.

Article 1 Definitions

The following definitions apply to this Term Sheet:

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

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

1.3 "Contractor" shall mean "Prime Contractor" and any Sub-Contractor(s) ("Sub-Contractor") providing the services under this Professional Services Term Sheet, accompanying Purchase Order and Corresponding Documents. Prime Contractor and Sub-Contractor are jointly and severally responsible for the successful deliverable of the services to be performed under this Professional Services Term Sheet.

1.4 "Deliverables" means Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Term Sheet, including without limitation, the work product described in the accompanying Purchase Order and Corresponding Documents.

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

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

1.7 "Purchase Order" means the accompanying Purchase Order and any other corresponding documents, such as a Statement of Work submitted by Contractor to City ("Corresponding Documents") in response to a request for quote by City for the Services described in the Purchase Order. The Purchase Order is issued by City to Contractor pursuant to a Technology Marketplace Agreement, which agreement is identified in the Purchase Order. The Purchase Order and all Corresponding Documents are incorporated into this Term Sheet as though fully set forth herein.

1.8 "Services" means the work performed by Contractor under this Term Sheet as specifically described in the "Statement of Work" attached to the accompanying Purchase Order, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Term Sheet.

1.9 "Term Sheet" means this document, including all attached exhibits, and all applicable City Ordinances and Mandatory City Requirements in the Technology Marketplace

Agreement that are specifically incorporated into this Term Sheet by reference, as provided herein.

Article 2   Term of the Term Sheet

2.1   **Term.** The term of this Term Sheet shall reflect the term of the Services set forth in the accompanying Purchase Order and Corresponding Documents, unless earlier terminated in accordance with the provisions of this Term Sheet or the applicable Technology Marketplace Agreement.

Article 3   Reserved (Financial Matters)

Article 4   Services and Resources

4.1   **Services Contractor Agrees to Perform**. Contractor agrees to perform the Services provided for in the accompanying Purchase Order and Corresponding Documents. Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond what is set forth in the Purchase Order and Corresponding Documents, unless the Purchase Order and Corresponding Documents is modified in writing.

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

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

4.4   **Liquidated Damages.** By entering into this Term Sheet, Contractor agrees that in the event the Services are delayed beyond the scheduled milestones and timelines as provided in the Purchase Order and Corresponding Documents, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the sum of $100 (One Hundred Dollars and Zero Cents) per calendar day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Term Sheet was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor under this Term Sheet or any other contract between City and Contractor. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Contractor's failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City.

Article 5   Reserved (Insurance and Indemnity)

Article 6   Reserved (Liability of the Parties)

Article 7   Reserved (Payment of Taxes)

Article 8   Termination and Default

8.1   Termination for Convenience

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

8.1.2   Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Term Sheet on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

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

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

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

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

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

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

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

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

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

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

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

8.1.4   In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Term Sheet, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

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

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

8.2   **Termination for Default; Remedies**

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

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

11.2	Compliance with Laws		
13.1	Nondisclosure of Private, Proprietary or Confidential Information		

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

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

custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

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

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

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

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

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

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

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

			11.3	Severability
9.1	Ownership of Results		11.5	Term Sheet Made in California; Venue
9.2	Works for Hire		11.6	Entire Agreement
11.2	Compliance with Laws		13.1	Nondisclosure of Private, Proprietary or Confidential

				Information

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

Article 9   Rights In Deliverables

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

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

Article 10   Reserved (Additional Requirements Incorporated by Reference)

Article 11   General Provisions

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

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

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

11.4   **Incorporation of Recitals**. The matters recited above are hereby incorporated into and made part of this Term Sheet.

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

11.6   **Order of Precedence.** This Term Sheet may be modified only as provided in Section 11.1, "Modification of this Term Sheet." Should the terms of this Term Sheet conflict with the Purchase Order, Corresponding Documents and/or the Technology Marketplace Agreement into which this Term Sheet is hereby incorporated, the terms of the Technology Marketplace Agreement shall control, followed by this Term Sheet shall control.

11.7   **Notices to the Parties.** Unless otherwise indicated in this Term Sheet, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as set forth in the accompanying Purchase Order and Corresponding Documents.

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

Article 12   Reserved (Department Specific Terms)

Article 13   Data and Security

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

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

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

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

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

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

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

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

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

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

Exhibit 1
Technology Marketplace Agreements

Contractor	Agreement ID		Contractor	Agreement ID
Actnet Advanced Technology Corporation	1000012952		CCS Global Tech	1000012601
	1000012953		CDW Government	1000012602
	1000012954		Central Computers	1000012603
	1000012955		Computerland	1000012604
Beta Nineties Computer, Inc.	1000012956		ConvergeOne	1000012605
	1000012957		Cornerstone JV	1000012606
Diamond Technology, Inc.	1000012958		DPP Tech	1000012607
	1000012959		Dynamic Systems	1000012608
	1000012960		En Pointe	1000012609
Exigy, Inc.	1000012961		Intervision	1000012610
	1000012962		Presidio	1000012611
	1000012963		Robert Half	1000012612
Farallon Geographics, Inc.	1000012964		Slalom	1000012613
	1000012965		Softnet	1000012614
Five Paths, LLC	1000012966		Stellar	1000012615
	1000012968		Variedy	1000012616
	1000012969		World Wide Technology	1000012617
GenSigma LLC	1000012970		X Tech JV	1000012618
	1000012971		Zones	1000012619
Parthex Tech, Inc.	1000012972		Ameritech	1000012721
Spiral Scout, LLC	1000012973		BridgeMicro	1000012722
	1000012974		Delta-CM Pros JV	1000012723
Studio 151	1000012975		Elyon	1000012724
T&S Trading Co.	1000012976		Ipso Facto	1000012725
	1000012977		LearnIT	1000012726
	1000012978		NuSpective	1000012727
Toptek Micro Center, Inc.	1000012980		Pantheon	1000012728
Two Rivers, Corp.	1000012981		Staples	1000012729
Xterra Solutions Inc.	1000012982		Vox	1000012730
	1000012983			
	1000012984			

City and County of San Francisco Technology Marketplace
Software Development Term Sheet

This Software Development Agreement Term Sheet ("Term Sheet") is attached, and incorporated as though fully set forth therein, to each Purchase Order for Software Development hereby issued by the City and County of San Francisco ("City") pursuant to any of the Technology Marketplace Agreements identified in Appendix D ("Technology Marketplace Agreements"), heretofore entered into by and between the City and those Contractors selected by City pursuant to a Request for Proposals 99400 issued by City on or about July 2018.

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

ACCEPTANCE TESTS	The procedures and performance standards required for Acceptance by City of the Programs and the System as defined herein. These procedures and performance standards are set forth in the Acceptance Test Plan with respect to each Task Order issued pursuant to the Purchase Order and Corresponding Documents.
ACCEPTANCE WINDOW	The time period specified in each Task Order issued pursuant to the Purchase Order and Corresponding Documents following completion of a Deliverable, during which Contractor must secure Acceptance of the completed Work from City.
CONTRACTOR	Means "Prime Contractor" and any Sub-Contractor(s) ("Sub-Contractor") providing the services under this Term Sheet. Prime Contractor and Sub-Contractor are jointly and severally responsible for the successful deliverable of the services to be performed under this Term Sheet, the Purchase Order and Corresponding Documents.
CRITICAL	Those milestones specified in a Task Order issued pursuant to the Purchase Order and Corresponding Documents, as Milestones after which liquidated damages apply for failure to complete performance in accordance with this Term Sheet.
DELIVERABLES	Those items described and itemized in a Task Order issued pursuant to the Purchase Order and Corresponding Documents, which items Contractor commits to provide to City on the dates specified in the Implementation Plan.
DESIGN SPECIFICATIONS	The written specifications that describes all data, architectural, interface and component-level design for the software, together with descriptions of the hardware and software environment in which a Program may be operated and the files or databases, if any, with which a Program shall function.
DOCUMENTATION	Technical publications, such as reference, installation, administrative, maintenance, and programmer manuals, provided by Contractor to City, in

accordance with each Task Order issued pursuant to the Purchase Order and Corresponding Documents.

EQUIPMENT — The central processing unit[s] and associated peripheral devices or, computer hardware on which a Program will operate and with which a Program must be compatible, to be purchased by City.

FUNCTIONAL SPECIFICATIONS — The written description of City's requirements, operations, and procedures, which document is to be prepared by Contractor, and upon approval by City shall form the basis for the Design Specifications.

PERFORMANCE SPECIFICATIONS — The description of the minimum System characteristics and performance which must be achieved by the Functional Specifications in accordance with each Task Order issued pursuant to the Purchase Order and Corresponding Documents.

PROGRAMS — The software developed by Contractor and delivered to City, in the form of machine-executable instructions, to operate on the Equipment for purposes of accomplishing the functional capabilities set forth in each Task Order issued pursuant to the Purchase Order and Corresponding Documents.

PROJECT SCHEDULE — The schedule for Contractor's completion of all phases of Work, and the Critical Milestones associated with such completion, as specified in in each Task Order issued pursuant to the Purchase Order and Corresponding Documents.

PROPOSAL — The written proposal Contractor submitted in response to City's request for the services to be performed under this Term Sheet.

PURCHASE ORDER — Means the accompanying Purchase Order and any other corresponding documents, including but not limited to the Contractor's Proposal, Statement of Work and all Task Orders related thereto ("Corresponding Documents"). The Purchase Order is issued by City to Contractor pursuant to a Technology Marketplace Agreement, which agreement is identified in the Purchase Order. The Purchase Order and all Corresponding Documents are incorporated into this Term Sheet as though fully set forth herein.

REVIEW PERIOD — The time period during which City shall review the Work completed with respect to each Task Order issued pursuant to the Statement of Work and give notice to Contractor of its acceptance or rejection of the completed phase.

SERVICES — The work performed by Contractor under this Term Sheet as specifically described in the Purchase Order and Corresponding Documents, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Term Sheet.

STATEMENT OF WORK	The document prepared by Contractor outlining the Services to be performed pursuant to the Purchase Order. The Statement of Work shall include all items set forth in Exhibit 2, including, but not limited to: Project Summary, Project Mangers, Notice Procedures, Services to be Performed, Performance Specifications, Project Schedule and Milestones (Including Critical Milestones), Deliverables, Documentation and Property Rights.
SYSTEM	The Programs prepared by Contractor for City and the Equipment on which those Programs operate.
TASK ORDER	The document issued by City to Contractor outlining one or more tasks which City wishes for Contractor to complete. Each Task Order shall conform to the template set forth in Exhibit 3.
TERM SHEET	This document and all of the accompanying schedules, exhibits, and Appendices together with any future written and executed amendments.
WORK	The implementation, assembly, installation, optimization, and integration as required by the Purchase Order and Corresponding Documents, whether completed or partially completed, including all labor, materials, and services provided, or to be provided, by Contractor to fulfill its obligations hereunder. The Work, therefore, constitutes all of the requirements for providing the System to the City.

Whenever the words "as directed", "as required", "as permitted", or words of like effect are used, it shall be understood as the direction, requirement, or permission of the City. The words "sufficient", "necessary", or "proper", and the like, mean sufficient, necessary or proper in the judgment of the City, unless otherwise indicated by the context.

2.   Reserved.

3.   Term of the Term Sheet. The term of this Term Sheet shall reflect the term of the Purchase Order and Corresponding Documents, unless earlier terminated in accordance with the provisions of this Term Sheet or the applicable Technology Marketplace Agreement.

4.   Reserved.

5.   Services.

a.   Program Development. Subject to the terms and conditions of this Term Sheet, and in consideration for the payments to be made, Contractor agrees to complete the Work set forth in the Purchase Order and Corresponding Documents.

b.   Interpretation of the Specifications. The City hereby acknowledges that the Functional Specifications will, upon acceptance by the City, provide the basis for the Design Specifications, and that the Design Specifications will, upon acceptance by the City, provide the basis for the coding and installation of the Programs. In the event of a variance between the

written proposal Contractor submitted in response to City's request for the services to be performed under this Term Sheet (the "Proposal") and the Functional Specifications, the Functional Specifications shall be determinative. In the event of a variance between the Functional Specifications and the Design Specifications, the Design Specifications shall be determinative.

      c.   **Interpretive Differences.**   In the event City and Contractor differ in their interpretations of the Proposal, Functional Specifications, Design Specifications, or Acceptance Tests, City's interpretation, if reasonable, shall be determinative.

      d.   **Change Order Requests.** All change order requests by the City shall be made in writing by the City's project manager. Within fourteen days following its receipt of a change order request, Contractor will submit to City a written cost estimate, which shall include any adjustments to the project price, the Project Schedule, and the Acceptance criteria. Additional services by Contractor made necessary by the City's change order request shall be billed at Contractor's then current consulting rates. City will notify Contractor in writing if it wishes to proceed with the change order within fourteen days.

6.   **Acceptance Procedure.**

      a.   **Acceptance Tests.** Acceptance of Work shall be defined in each Task Order issued pursuant to the Purchase Order and Corresponding Documents. Upon completion of each Task, City shall, within the Review Period defined in the corresponding Task Order, review and give notice to Contractor of City's acceptance or rejection of the specifications of the Work. Should City reject any part of the Work, then City is entitled to another Review Period upon receipt from Contractor of the revised specifications. In the event that Contractor fails to provide Work which meets the Acceptance Criteria of the corresponding Task Order during the Acceptance Window defined in the corresponding Task Order, City may, at its option, assess Liquidated Damages per Section 28 of this Term Sheet and/or terminate this Term Sheet under Section 8(C), Termination for Cause. In the event that Contractor cannot achieve System Acceptance within sixty days following the commencement of Acceptance Testing, Contractor shall be in default under this Agreement and, in addition to those remedies set forth in Section 6 entitled "Termination," City is further entitled to a refund of all payments made to Contractor under this Agreement

      b.   **Contractor's Assistance in Acceptance Tests.** Contractor must furnish all materials, equipment, and technical assistance necessary to conduct the Acceptance Tests. Test Equipment provided by Contractor for performance of the Acceptance Tests shall be currently certified as "calibrated" by the test equipment manufacturer, or its authorized calibration service agent.

      d.   **Parallel Processing.** The parties contemplate that parallel processing will be used until both the Programs and its backup have completed the Acceptance Tests set forth in each Task Order.

7.   **Documentation Delivery and Training.**

      a.   **Documentation Delivery.** Contractor will deliver copies of the completed Documentation for the Work in accordance with the Purchase Order and Corresponding

Documents. The City may withhold its issuance of the notice of final Acceptance until City receives the completed Documentation.

b.   City Training. If requested by City through a Task Order, Contractor will provide training in accordance with said Task Order.

8.   Term and Termination/Termination for Convenience.

a.   Project Schedule. The Project Schedule is set forth in the Purchase Order and Corresponding Documents may be amended by mutual agreement between City and Contractor.

(1)   Delays. To prevent slippage in the completion of the project, Contractor agrees that if such slippage occurs, it will assign additional qualified personnel to the project.

(2)   Time of the Essence. The parties agree that time is of the essence, and that the System will be developed and implemented in accordance with the Project Schedule.

(3)   Critical Milestones. Contractor acknowledges and understands that the Project Schedule contains certain time-sensitive milestones (Critical Milestones) that must be attained by certain dates; otherwise, the City will suffer financial harm. Milestones that are Critical Milestones are so indicated in the Purchase Order and Corresponding Documents. Notwithstanding City's ability to assess liquidated damages for Contractor's failure to meet any Critical Milestone, the time period for achieving final Acceptance shall be set forth in each Task Order issued pursuant to the Purchase Order and Corresponding Documents. In addition to any other remedy provided under this Term Sheet, Contractor's inability to achieve final Acceptance in accordance with each Task Order will be cause for immediate termination of this Term Sheet, and City shall be entitled to a full refund of any amounts paid to Contractor under this Term Sheet.

b.   Progress Reports. Contractor will provide City with written status reports advising the City of its progress in accordance with each Task Order issued pursuant to the Purchase Order and Corresponding Documents.

c.   Termination for Cause. In the event Contractor fails to perform any of its obligations under this Term Sheet, this Term Sheet may be terminated and all of Contractor's rights hereunder ended. Termination will be effective after ten days written notice to Contractor. No new work will be undertaken after the date of receipt of any notice of termination, or five days after the date of the notice, whichever is earlier. In the event of such termination, Contractor will be paid for those services performed under this Term Sheet to the satisfaction of the City, up to the date of termination. However, City may offset from any such amounts due Contractor any liquidated damages or other costs City has or will incur due to Contractor's non-performance. Any such offset by City will not constitute a waiver of any other remedies City may have against Contractor for financial injury or otherwise.

d.   Termination for Convenience. City may terminate this Term Sheet for City's convenience and without cause at any time by giving Contractor thirty days written notice of such termination. In the event of such termination, Contractor will be paid for those services performed, pursuant to this Term Sheet, to the satisfaction of the City up to the date of termination. In no event will City be liable for costs incurred by Contractor after receipt of a notice of termination. Such non-recoverable costs include, but are not limited to, anticipated

profits on this Term Sheet, post-termination employee salaries, post-termination administrative expenses, or any other cost which is not reasonable or authorized under this section. This section shall not prevent Contractor from recovering costs necessarily incurred in discontinuing further work under the contract after receipt of the termination notice.

e. **Obligations upon Termination.** Upon termination of this Term Sheet, Contractor will submit an invoice to City for an amount which represents the value of its work or services actually performed prior to the effective date of termination for which Contractor has not previously been compensated, except that with respect to reimbursement for Contractor's services, in no event will the compensation paid for the month in which termination occurs be greater than the scheduled monthly fee multiplied by a fraction, the numerator of which will be the days in the month elapsed prior to the termination and the denominator of which shall be 31. Upon approval and payment of this invoice by City, City shall be under no further obligation to Contractor monetarily or otherwise.

f. **Survival.** This section and the following sections of this Term Sheet shall survive termination or expiration of this Term Sheet:

10d	Taxes	23.	Insurance
13.	Property Rights of the Parties	24.	Indemnification and General Liability
16.	Submitting False Claims; Monetary Penalties	25.	Incidental and Consequential Damages
		26.	Liability of City
		31.	Audit and Inspection of Records
18.	Payment Does Not Imply Acceptance of Work	47.	Non-Waiver of Rights
		48.	Administrative Remedy for Term Sheet Interpretation
19.	Responsibility for Equipment		
20.	Independent Contractor; Payment of Taxes and Other Expenses	49.	Term Sheet Made in California; Venue
		50.	Construction
21.	Warranty	51.	Entire Term Sheet
22.	Confidential Information	54.	Protection of Private Information

9. **Default; Remedies.** Each of the following shall constitute an event of default ("Event of Default") under this Term Sheet:

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

10.d	Taxes	23.	Insurance
16.	Submitting False Claims; Monetary Penalties	32.	Subcontracting
		53.	Compliance with Laws
22.	Confidential Information	54.	Protection of Private Information

(2)   Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Term Sheet, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(3)   Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any

bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Term Sheet or to seek specific performance of all or any part of this Term Sheet. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Term Sheet or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Term Sheet or any other agreement. All remedies provided for in this Term Sheet may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

10.   Payments. All compensation due to the Sub-Contractor shall be the responsibility of Contractor. City shall have no obligation to pay Sub-Contractor any amount under this Term Sheet for professional services.

11.   City Responsibilities

a.   City Representative. City will make available to Contractor a qualified project manager who will be authorized to make binding decisions for the City regarding the Purchase Order and Corresponding Documents and will promptly: (1) review all specifications, technical materials and other documents submitted by Contractor, request necessary corrections, and approve such documents; (2) provide requested City information and data and assume responsibility on the adequacy of the same; (3) advise Contractor of City's requirements; and (4) upon request provide access to City's staff, facility and hardware.

b.   City Facilities. If specified in the Purchase Order and Corresponding Documents, City will provide facilities or equipment for Contractor's use during the term of the Term Sheet and the conditions upon which access will be granted.

c.   Data Conversion. The Purchase Order and Corresponding Documents shall state if City or Contractor shall be responsible for the timely and accurate conversion of City's data to the format required by the Programs, and for providing the test data specified in the Acceptance Test Plan.

12.   Contractor Staffing and Support Services

a. **Project Manager.** Contractor shall designate a Project Manager, who shall be accessible by telephone or email throughout the duration of the Term Sheet and shall be available from 9 a.m. to 5 p.m. Monday through Friday, excluding weekends and holidays. These hours may be adjusted by mutual agreement of City and Contractor. Throughout the term of this Term Sheet, whenever the Project Manager is not on site, he or she must be available by electronic pager. Whenever the Project Manager will be unavoidably absent or otherwise unavailable by telephone or electronic pager for more than two hours, then a substitute Project Manager must be designated to respond to telephone calls and pages from the City. Contractor shall use its best efforts to maintain the same Project Manager until final Acceptance of the System. However, if Contractor needs to replace its Project Manager, it shall provide City with written notice thereof at least 45 days prior to the date the Project Manager is to be replaced. Notwithstanding the foregoing, Contractor may appoint temporary Project Managers in connection with short term unavailability, sick leave, or reasonable vacations, provided that Contractor gives City reasonable notification thereof in advance. City may require Contractor to replace its Project Manager, by giving Contractor notification thereof and City's objective reasons therefor.

b. **Staffing.** Work under this Term Sheet shall be performed only by competent personnel appropriately trained in technical skills to perform their duties under the supervision of, and in the employment of, Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. The personnel of each party, when on the premises of the other, shall comply with the security and other personnel regulations of the party on whose premises such individual is located.

c. **Maintenance Services.** Contractor will provide maintenance services for the Programs in accordance with the terms and conditions of the Purchase Order and Corresponding Documents. Such services, if any, shall commence upon Acceptance of the Programs by City or, upon expiration of the performance warranty provided herein.

13. Property Rights of the Parties

Subject to Subsections "a" and "b" below, the Property Rights of the Parties shall be outlined in the Purchase Order and Corresponding Documents.

a. **Ownership of Underlying Modules.** A conveyance of title is subject to Contractor's retention of ownership of all modules developed by Contractor as a utility routine or generalized interface and not specifically for City.

b. **City's Data.** Any data or other materials furnished by the City for use by Contractor under this Term Sheet shall remain the sole property of the City and will be held in confidence in accordance with Section 21 of this Term Sheet. Such materials shall be returned to City upon Acceptance of the Programs.

14. Guaranteed Maximum Costs. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or

promised payments to Contractor under this Term Sheet in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Term Sheet as provided in Section 11.5, "Modification of this Term Sheet."

15.   Reserved.

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

17.   Reserved.

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

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

20.   Independent Contractor; Payment of Taxes and Other Expenses

   a.   Independent Contractor. For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Term Sheet. Contractor, its agents, and employees will not represent or hold themselves out to be employees

of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Term Sheet shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Term Sheet referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Term Sheet. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Term Sheet, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

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

21.   Warranty

a.   Warranty of Title and Indemnification. Contractor warrants that the Programs developed pursuant to this Term Sheet will, prior to its transfer to City, be the sole and exclusive property of Contractor. If notified promptly in writing of any judicial action brought against City

based on an allegation that City's use of the Programs infringes a patent or copyright, or any rights of a third party, or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (infringement), Contractor will hold City harmless and defend such action at its expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the Programs constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement. In the event that a final injunction shall be obtained against City's use of the Programs by reason of Infringement, or in Contractor's opinion City's use of the Programs is likely to become the subject of Infringement, Contractor may at its option and expense (a) procure for City the right to continue to use the Programs as contemplated hereunder, (b) replace the Programs with non-infringing, functionally equivalent substitute Programs, or (c) suitably modify the Programs to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the Programs. If none of these options is reasonably available to Contractor, then this Term Sheet may be terminated at the option of either party hereto and Contractor shall refund to City all amounts paid under this Term Sheet for the development and license of the infringing Programs.

      b.   **Warranty of Authority; No Conflict.** Each party hereby warrants to the other that it is authorized to enter into this Term Sheet and that its performance thereof will not conflict with any other agreement.

      c.   **Warranty of Performance.** Contractor hereby warrants that when fully implemented, the Programs to be developed and provided under this Term Sheet shall perform in accordance with the Design Specifications applicable thereto on the System Acceptance date.

22.   Confidential Information.

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

      b.   **Survival.** These obligations of confidentiality shall survive the termination of the Term Sheet.

23.   Insurance.

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

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

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

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

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

(5)   Technology Errors and Omissions Liability coverage, with limits of $1,000,000 each occurrence and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

25. Incidental and Consequential Damages. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Term Sheet shall constitute a waiver of limitation of any rights that City may have under applicable law.

26. Liability of City. CITY'S PAYMENT OBLIGATIONS TO CONTRACTOR OR SUB-CONTRACTOR IS LIMITED TO CITY'S PAYMENT OBLIGATION TO CONTRACTOR AS DETAILED IN THE TECHNOLOGY MARKEPPLACE AGREEMENT FOR THE SPECIFIC SERVICES OUTLINED IN THIS TERM SHEET.   NOTWITHSTANDING ANY OTHER PROVISION OF THIS TERM SHEET OR THE TECHNOLOGY MARKEPPLACE AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS TERM SHEET, THE TECHNOLOGY MARKEPPLACE AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS TERM SHEET OR THE TECHNOLOGY MARKETPLACE AGREEMENT.

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

28. Notices to the Parties. Unless otherwise indicated elsewhere in this Term Sheet, all written communications sent by the parties may be by U.S. mail or by fax, and shall be addressed as provide in the Purchase Order and Corresponding Documents.

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

29. Liquidated Damages. By entering into this Term Sheet, Contractor agrees that in the event the Services, as provided under Section 5 herein, are delayed beyond the Critical Milestones as provided in the Project Schedule, Appendix C, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of $100 (One Hundred Dollars and Zero Cents) per day for each day of delay beyond the Critical Milestones is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to deliver to City within the time fixed or such extensions of time permitted in writing by Purchasing.

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

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

32.   Subcontracting. Contractor is prohibited from subcontracting this Term Sheet or any part of it unless such subcontracting is first approved by City in a written instrument executed and approved in the same manner as this Term Sheet. Neither party shall, on the basis of this Term Sheet, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

33.   Assignment. The services to be performed by Contractor are personal in character and neither this Term Sheet nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Term Sheet.

34.   Reserved.

35.   Nondiscrimination; Penalties.

      a.   Contractor Shall Not Discriminate. In the performance of this Term Sheet, Contractor agrees not to discriminate against any employee, City and County employee working with such contractor or subcontractor, applicant for employment with such contractor or subcontractor, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

      b.   Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Term Sheet.

      c.   **Reserved.**

      d.   **Condition to Contract.** As a condition to this Term Sheet, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form CMD-12B-101)) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

      e.   **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Term Sheet as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Term Sheet under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Term Sheet may be assessed against Contractor and/or deducted from any payments due Contractor.

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

      a.   Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Term Sheet as though fully set forth herein. The text of the Chapter 12T is available on the web at http://sfgov.org/olse/fco. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Term Sheet shall have the meanings assigned to such terms in Chapter 12T.

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

37.   **Reserved.**

38.   **Reserved.**

39.   **Drug-Free Workplace Policy.** Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Term Sheet.

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

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

42. Minimum Compensation Ordinance. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Term Sheet, Contractor certifies that it is in compliance with Chapter 12P.

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

44. Limitations on Contributions. By executing this Term Sheet, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor.

Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

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

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

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

48.   Administrative Remedy for Term Sheet Interpretation.

        a.   **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Term Sheet. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Term Sheet in accordance with the Term Sheet and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

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

50. Construction. All paragraph captions are for reference only and shall not be considered in construing this Term Sheet.

51. Order of Precedence. This Term Sheet may be modified only as provided in Section 52, "Modifications and Change Orders." Should the terms of this Term Sheet conflict with the Purchase Order, Corresponding Documents and/or the Technology Marketplace Agreement into which this Term Sheet is hereby incorporated, the terms of the Technology Marketplace Agreement shall control, followed by this Term Sheet shall control.

52. Modifications and Change Orders. The City may at any time, by written order, submit a Change Order to Contractor. Within ten working days of receiving a proposed Change Order, Contractor shall submit to City a written cost estimate, which shall include any adjustments to the Project price, the Project Schedule, the Statement of Work, and/or the Acceptance Criteria, or any other obligations of Contractor, as applicable. All Change Orders must be pre-approved, in writing, by City's Project Manager. Contractor shall not proceed with any work contemplated in any Change Order until it receives written notification to commence such work from City's Project Manager. Contractor shall commence the work contemplated by the Change Order upon receiving written notice from City's Project Manager. If Contractor and City disagree on the effect that a Change Order will have on the Project price, the Project Schedule, the Statement of Work, and/or the Acceptance Criteria, then Contractor must nevertheless proceed with the work contemplated by the Change Order once City's Project Manager and the Purchaser direct Contractor, in writing, to do so. This Term Sheet may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Term Sheet.

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

54. Protection of Private Information. Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code ("Protection of Private Information"), including the remedies provided. The provisions of Chapter 12M are incorporated herein by reference and made a part of this Term Sheet as though fully set forth. Capitalized terms used in this section and not defined in this Term Sheet shall have the meanings assigned to such terms in Chapter 12M. Consistent with the requirements of Chapter 12M, Contractor agrees to all of the following: Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Term Sheet to any other Subcontractor, person, or other entity, unless one of the following is true:

(1) The disclosure is authorized by this Term Sheet;
(2) The Contractor received advance written approval from the Contracting Department to disclose the information; or
(3) The disclosure is expressly required by a judicial order.

Any disclosure or use of Private Information authorized by this Term Sheet shall be in accordance with any conditions or restrictions stated in this Term Sheet. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any

conditions or restrictions stated in the approval. Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing. Any failure of Contractor to comply with Chapter 12M shall be a material breach of this Term Sheet. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Term Sheet, debar Contractor, or bring a false claim action against Contractor.

55.   Incorporation of Recitals. The matters recited above are hereby incorporated into and made part of this Term Sheet.

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

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

58.   Cooperative Drafting. This Term Sheet has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Term Sheet reviewed and revised by legal counsel. No party shall be considered the drafter of this Term Sheet, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Term Sheet.

59.   Reserved.

Exhibits

1:     Technology Marketplace Agreements
2:     Statement of Work Template
3:     Task Order Template

Exhibit 1
Technology Marketplace Agreements

Contractor	Agreement ID
Actnet Advanced Technology Corporation	1000012952
	1000012953
	1000012954
	1000012955
Beta Nineties Computer, Inc.	1000012956
	1000012957
Diamond Technology, Inc.	1000012958
	1000012959
	1000012960
Exigy, Inc.	1000012961
	1000012962
	1000012963
Farallon Geographics, Inc.	1000012964
	1000012965
Five Paths, LLC	1000012966
	1000012968
	1000012969
GenSigma LLC	1000012970
	1000012971
Parthex Tech, Inc.	1000012972
Spiral Scout, LLC	1000012973
	1000012974
Studio 151	1000012975
T&S Trading Co.	1000012976
	1000012977
	1000012978
Toptek Micro Center, Inc.	1000012980
Two Rivers, Corp.	1000012981
Xterra Solutions Inc.	1000012982
	1000012983
	1000012984

Contractor	Agreement ID
CCS Global Tech	1000012601
CDW Government	1000012602
Central Computers	1000012603
Computerland	1000012604
ConvergeOne	1000012605
Cornerstone JV	1000012606
DPP Tech	1000012607
Dynamic Systems	1000012608
En Pointe	1000012609
Intervision	1000012610
Presidio	1000012611
Robert Half	1000012612
Slalom	1000012613
Softnet	1000012614
Stellar	1000012615
Variedy	1000012616
World Wide Technology	1000012617
X Tech JV	1000012618
Zones	1000012619
Ameritech	1000012721
BridgeMicro	1000012722
Delta-CM Pros JV	1000012723
Elyon	1000012724
Ipso Facto	1000012725
LearnIT	1000012726
NuSpective	1000012727
Pantheon	1000012728
Staples	1000012729
Vox	1000012730

Exhibit 2
Statement of Work Template

A. Project Summary

B. Project Mangers

C. Notice Procedures

    1.   To City:

    2.   To Prime Contractor:

    3.   To Sub-Contractor:

D. Services to be Performed

E. Program Performance Specifications

    4.   System Capacity:

    5.   Compatibility with other City systems:

    6.   System Execution Speed and Response Time: Peak v Off Peak Hours

    7.   System reliability, including downtime and downgraded performance:

    8.   System expandability and accessibility to peripheral units:

    9.   Computer operating system or language:

    10.   Programming standards:

    11.   Data:

        (i) The combinations of data that the System will be required to output:

        (ii) The frequency that City will need to recall all or part of its data bank:

        (iii)The length of time the data must be retained by the System, or stated in the converse, the frequency with which data may be purged from the computer system:

        (iv)The flexibility required by City in entering its data:

        (v) The degree of security required by City for the System based on sensitivity of the data:

F. Project Schedule and Milestones (Including Critical Milestones)

G. Deliverables

H. Documentation

I. Property Rights

    ➤ **Choose "a" or "b".**

    a. License of the Programs. Upon receipt of final payment for all services rendered by Contractor under this Term Sheet, Contractor hereby grants to City, in perpetuity, an irrevocable, nonexclusive, right and license to use for internal purposes only a machine readable copy of the Programs and Documentation in connection with the City's business.

b. **Sale of the Programs.** Upon receipt of final payment for the Programs, Contractor will convey to City good and marketable title to the Programs free and clear of all liens, claims and encumbrances.

➜ **Include "c" if applicable.**

c. **Ownership of Modifications and Enhancement.** Contractor hereby grants to City an exclusive perpetual license to use for internal purposes only the Programs contained in the modifications and enhancements to the software package licensed hereunder to City.

➜ **Include "d" if applicable.**

d. **Royalty Payments.** Contractor shall pay to City a royalty of **[insert number in words]** percent (**[insert number]** %) of all fees received by Contractor for the licensing **[or sale]** of the Programs, or portions thereof until the total amount of payments received by City total **[insert amount in words]** dollars ($ **[insert amount as number]**) at which time such royalty payments shall cease.

J. **Project Costs**

Exhibit 3
Task Order Template

1.   **Start Date:**

2.   **Task Number:**

3.   **Task Name:**

4.   **Phase 1: Preparation of Functional Specifications**

 a.   Time for completion:
 b.   Functional Specifications:
 c.   Review Period:
 d.   Acceptance Window:
 e.   Acceptance Criteria:
 f.   Acceptance Procedure:

5.   **Phase 2: Preparation of Design Specifications**

 a.   Time for completion:
 b.   Design Specifications:
 c.   Review Period:
 d.   Acceptance Window:
 e.   Acceptance Criteria:
 f.   Acceptance Procedure:

6.   **Phase 3: Program Coding, System Installation, and Documentation Delivery**

 a.   Time for completion:
 b.   Review Period:
 d.   Acceptance Window:
 e.   Acceptance Criteria:
 f.   Acceptance Procedure: