

City and County of San Francisco Technology Marketplace

Licensed Content Term Sheet

This Licensed Content Term Sheet (“Term Sheet”) is attached, and incorporated as though fully set forth therein, to each Purchase Order for licensed content hereby issued by the City and County of San Francisco (“City”) under Contractor’s OCA Technology Marketplace Master Agreement to which this Term Sheet is attached (“Agreement”). Capitalized terms used in this Term Sheet that are not otherwise defined have the meanings given them in the Agreement.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Term Sheet:

1.1 “Agreement” means the Agreement to which this Term Sheet is attached and this Term Sheet, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Term Sheet by reference as provided herein.

1.2 “Authorized Users” means a person authorized by City to access the Licensed Content, including any City employee, contractor or agent, or any other individual or entity authorized by City.

1.3 “City” or “the City” or “Licensee” means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and the requesting department.

1.4 Reserved.

1.5 “Contractor” or “Content Provider” means Licensor. In required or standard City contracting terms, the word “Contractor” may appear, and it is to be construed as meaning the Licensor.

1.6 “Licensed Content”, “Licensed Materials”, or “Deliverables” mean(s) the deliverables provided to City during the course of Licensor’s performance of this Term Sheet and the Agreement, including without limitation, the content and information published by Licensor, as set forth in the accompanying Purchase Order and made accessible to Authorized Users under this Term Sheet and the Agreement.

1.7 “Licensor” means the Contractor with whom the City has entered into the Agreement and the entity to whom a Purchase Order is hereby issued for the purchase of one or more perpetual software licenses.

1.8 “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.

1.9 “Party” or “Parties” means, respectively, the City and Contractor either individually or collectively.

1.10 “Purchase Order” means the accompanying Purchase Order and any other corresponding documents submitted by Contractor to City (“Corresponding Documents”) in response to a request for quote by City for the Licensed Content Services described in the Purchase Order. The Purchase Order is issued by City to Contractor pursuant to the Agreement, which 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.

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

Article 2 Term of the Agreement

2.1 The term of this Term Sheet shall reflect the term of the Licensed Content 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 Agreement.

Article 3 Services and Resources

3.1 **Services Contractor Agrees to Perform/Licensors Performance Obligations.** Contractor agrees to perform the Services stated in the scope of work attached to the accompanying Purchase Order. Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for Services beyond the scope of work attached to the accompanying Purchase Order, unless the accompanying Purchase Order is modified as provided in Section 11.5 of the Agreement, “Modification of this Agreement.”

3.1.1 **Availability of Licensed Materials.** After the City has received and approved the Licensed Materials, Licensor shall make the Licensed Materials available to Authorized Users.

3.1.2 **Documentation.** Licensor will provide and maintain help files and other appropriate user documentation including, but not limited to, user guides.

3.1.3 **Quality of Service.** Licensor shall use reasonable efforts to provide continuous service. Permissible down-time includes periodic unavailability due to maintenance of the server(s), the installation or testing of software, the loading of additional Licensed Materials as they become available, and downtime related to the failure of equipment or Services outside the control of Licensor including, but not limited to, public or private telecommunications services or internet nodes or facilities. Scheduled down-time will be performed at a time to minimize inconvenience to Licensee and its Authorized Users.

3.1.4 **Downtime/Nonconformity of Licensed Materials.** If the Licensed Materials fail to operate in conformance with the terms of this Term Sheet and the Agreement, Licensee shall immediately notify Licensor, and Licensor shall promptly use reasonable efforts to restore access to the Licensed Materials as soon as possible. In the event that Licensor fails to repair the nonconformity in a reasonable time, Licensor shall reimburse Licensee in an amount

that the nonconformity is proportional to the total payment owed by Licensee under this Term Sheet and the Agreement.

3.1.5 Withdrawal of Licensed Materials. Licensor reserves the right to withdraw from the Licensed Materials any item or part of an item for which it no longer retains the right to publish, or which it has reasonable grounds to believe infringes copyright or is defamatory, obscene, unlawful, or otherwise objectionable. Licensor shall give written notice to the Licensee of such withdrawal no later than 30 days following the removal of any item pursuant to this Section. If any such withdrawal renders the Licensed Materials less useful to Licensee or its Authorized Users, Licensor shall reimburse Licensee in an amount that the withdrawal is proportional to the total payment owed by Licensee under this Term Sheet and the Agreement.

3.1.6 Usage Data. If requested, Licensor shall provide to Licensee statistics regarding the usage of the Licensed Materials by Licensee and/or its Authorized Users according to the then current standards in the industry

3.2 Subcontracting. Licensor will be responsible for provision of all content. Licensor's agreements with other licensors to provide content will not be considered subcontracting, unless content is specifically obtained for the purposes of fulfilling the obligations of this Term Sheet and the Agreement.

3.3 Warranty. Licensor 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 and the Agreement.

3.4 Warranties: Right to Grant License. Licensor warrants that it has the right to license the rights granted under this Term Sheet and the Agreement to use Licensed Materials, that it has obtained any and all necessary permissions from third parties to license the Licensed Materials, and that use of the Licensed Materials by Authorized Users in accordance with the terms of this Term Sheet and the Agreement shall not infringe the copyright of any third party.

Article 4 Intellectual Property Rights and Restrictions

4.1 Copyrighted Works. Except for the specific rights granted herein, all right, title and interest, including copyrights to the Licensed Materials, are owned exclusively by Licensor and its licensors. All rights in respect thereof are reserved to Licensor and such licensors. Through this Term Sheet and the Agreement, Licensee obtains certain limited rights to the Licensed Materials, but Licensee does not obtain or own any rights in the copyrights or any other intellectual property rights that may be associated with such Licensed Materials.

4.2 Authorized Uses

4.2.1 Grant of License. Licensor grants to Licensee a non-exclusive, non-transferable license to access, use, copy, and display the Licensed Content for its own internal business purposes. Licensee will use its best efforts to not use, sell, modify, publish, distribute, or allow any third party to use, sell, modify, publish, or distribute the Licensed Content. In the event where applicable public records law require disclosure that would violate this Section, both

Parties acknowledge the supremacy of public records law, and Licensee will work with Licensor to minimize disclosure.

4.2.2 Fair Use. Notwithstanding anything to the contrary in this Term Sheet and the Agreement, no term or provision of this Term Sheet and the Agreement shall be interpreted to limit or restrict the rights of Licensee and its Authorized Users, including Fair Use Rights, as provided by U.S. Copyright Act Sections 107 and 108 and other applicable intellectual property law. Notwithstanding anything to the contrary in this Term Sheet and the Agreement, Authorized Users shall not be restricted from extracting or using information contained in the Database for its municipal purposes, nonprofit educational, scientific, or research purposes, including extraction and manipulation of information for the purpose of illustration, explanation, example, comment, criticism, teaching, research, or analysis, if not engaged in for the purposes of commercial competition.

4.2.3 Reserved. (Public Facing Content)

4.2.4 Confidentiality of User Data. Licensor agrees to maintain the confidentiality of any data relating to the usage of the Licensed Materials by Licensee and its Authorized Users. Such data may be used solely for purposes directly related to the Licensed Materials and may only be provided to third parties in aggregate form. Raw usage data including, but not limited to, information relating to the identity of specific users and/or uses, shall not be provided to any third party.

4.3 Specific Restrictions on Use of Licensed Materials

4.3.1 Unauthorized Use. Except as specifically provided elsewhere in this Term Sheet and the Agreement, Licensee shall not knowingly permit anyone other than Authorized Users to use the Licensed Materials.

4.3.2 Removal of Copyright Notice. Licensee may not remove, obscure, or modify any copyright or other notices included in the Licensed Materials.

4.3.3 Commercial Purposes. Other than as specifically permitted in this Term Sheet and the Agreement, Licensee may not use the Licensed Materials for commercial purposes including, but not limited to, the sale of the Licensed Materials or bulk reproduction or distribution of the Licensed Materials in any form.

Article 5 General Provisions

5.1 Modification of this Term Sheet.

5.1.1 Notification of Modifications of Licensed Materials. Licensee understands that from time to time the Licensed Materials may be added to, modified, or deleted by Licensor and/or that portions of the Licensed Materials may migrate to other formats. Licensor shall give prompt notice of any such modifications to Licensee. If the Licensor fails to provide such reasonable notice, Licensee may treat the failure as a material breach of this Term Sheet and the Agreement. If any modifications render the Licensed Materials less useful to the Licensee or its Authorized Users, the Licensee may treat such modifications as a material breach of this Term Sheet and the Agreement. Licensor will provide, for the use of Licensee and Authorized Users, whatever improvements, enhancements, extensions, and other changes to the Licensed Materials Licensor may develop.

5.1.2 Notice of “Click-Through” License Terms or Other Means of Passive Assent. For Authorized Users, this Term Sheet and the Agreement shall expressly supersede any click-through, click-on, “Screen Wrap”, or other user agreement appearing on the Licensor’s site. Licensor will not require any authorized Licensee user to agree to any other terms or conditions not included in this written contract. Violation of this provision constitutes a material breach of this Term Sheet and the Agreement.