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 Services 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, which are specifically incorporated into this Term Sheet by reference as provided herein.

1.2   "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" and the requesting department.

1.3   "Contractor" 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 software maintenance Services.

1.4   "Documentation" means the technical publications relating to the use of the Licensed Software, such as reference, installation, administrative, and programmer manuals provided by Contractor to City.

1.5   "Errors, Defects, and Malfunctions" means either a deviation between the function of the Software (as defined below) and the Documentation furnished by Contractor for the Software, or a failure of the Software that degrades the use of the Software.

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

1.7   "Licensed Software" or "Software" means one or more of the proprietary computer software programs identified in Appendix A of the Agreement and/or accompanying Purchase Orders, 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 Appendix A of the Agreement and/or accompanying Purchase Order may identify more than one software product or more than one copy of any product.

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 "Patch" means a 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 (as defined below) of the Software.

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

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

1.13 "Purchase Order" means the accompanying Purchase Order and any other corresponding documents ("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 the Agreement. The Purchase Order and all Corresponding Documents are incorporated into this Term Sheet as though fully set forth herein.

1.14 "Subsequent Release" means 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 and the Agreement. Multiple Subsequent Releases may be supported by Contractor at any given time.

1.15 "Support Services" means the Software support service required under this Term Sheet and the Agreement. Support Services include 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.

1.16 "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.

1.17 "Upgrade" means 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.

1.18 "Warranty Period" means 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.

1.19   "Workaround" means 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.

Article 2   Term of the Term Sheet

2.1   **Term of Licensed Software Maintenance Support Services.** 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 Agreement.

(a)   **Charges for Maintenance and Support Services**.

(1) **Limited Term License.** When the license term specified in the Purchase Order and Corresponding Documents is less than perpetual, all charges for maintenance and Support Services are included in the periodic license or rental fee.

(2) **Perpetual License.** Where the license term specified in the Purchase Order and Corresponding Documents is perpetual, all charges for maintenance and Support Services are as stated in the Purchase Order and Corresponding Documents.

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

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

(b)   **Annual Maintenance and Support Charges.** Annual maintenance and Support Services charges shall not increase more than the amount stated in the accompanying Purchase Order. Notwithstanding the foregoing, if not stated in the accompanying Purchase Order, then Support Services charges shall not increase more than five percent (5%) of the rate of the year immediately prior to such increase. Contractor will make maintenance and Support Services available to City for the duration stated in the Purchase Order.

Article 3   License

3.1   **Grant of License.** The Parties hereby acknowledge the City's previous payment of the applicable one-time license fee, receipt of which is hereby acknowledged by Contractor. Contractor did grant and continues to grant City a non-exclusive and non-transferable perpetual license to use the Licensed Software listed in Appendix A of the Agreement. City acknowledges and agrees that the Licensed Software is the proprietary information of Contractor and that this Term Sheet and the Agreement grants City no title or right of ownership in the Licensed Software.

Article 4   Services and Resources

4.1   **Services Contractor Agrees to Perform**. Contractor agrees to perform the maintenance and Support Services provided for in this Term Sheet and the Agreement.

Article 5   Software Maintenance

5.1   **Maintenance and Support Services.**

　　5.1.1   **Maintenance and Support Services.** After Acceptance of the Licensed Software and subject to the terms, conditions, and charges set forth in this Section 5.1.1, Contractor will provide City with maintenance and Support Services for the Licensed Software as follows: (i) Contractor will provide such assistance as necessary to cause the Licensed Software to perform in accordance with the Specifications as set forth in the Documentation; (ii) Contractor will provide, for City's use, whatever improvements, enhancements, Upgrades, extensions, and other changes to the Licensed Software Contractor may develop; and (iii) Contractor will update the Licensed Software, as required, to cause it to operate under new versions or releases of the operating system specified in this Term Sheet and the Agreement so long as such updates, or Upgrades, are made generally available to Contractor's other licensees.

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

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

　　5.2.2   **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.

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

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

　　5.3.1   **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.

　　5.3.2   **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.

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

5.4 **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.