

City and County of San Francisco Technology Marketplace

Software Development Term Sheet

This Software Development 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”) 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

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. 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. The following definitions apply to this Term Sheet:

1.1 “Acceptance” means notice from the City to Contractor that the Licensed or developed software meets the specifications contained in the Documentation. City’s Acceptance of the Licensed or developed software shall be governed by the procedures set forth in Article 4 (“Services, Software Implementation, and Acceptance”).

1.2 “Acceptance Tests” means 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 Purchase Order and Corresponding Documents.

1.3 “Acceptance Window” means the time period in the Purchase Order and Corresponding Documents following completion of a Deliverable, during which Contractor must secure Acceptance of the completed Work from City.

1.4 “Agreement” means the Agreement to which this Term Sheet is attached and incorporated and this Term Sheet, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements, which are specifically incorporated into the Agreement by reference as provided herein, together with any future written and executed amendments.

1.5 “Change Order” means a written instrument signed by the City’s Project Manager that modifies this Term Sheet and the Agreement through an adjustment to one or more of the following: (i) the Project Schedule, (ii) the scope of work, (iii) the Acceptance Criteria, or (iv) other requirements specified in this Term Sheet and the Agreement.

1.6 “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.

1.7 "Confidential Information" means confidential City information including, but not limited to, personally-identifiable information ("PII"), protected health information ("PHI"), 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, including, but 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).

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

1.9 "Contractor" or "Consultant" 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 the Services to be performed under this Term Sheet, the Purchase Order, and Corresponding Documents.

1.10 "Critical Milestones" means those milestones specified in the Project Schedule, issued pursuant to the Purchase Order and Corresponding Documents, as Critical Milestones after which liquidated damages apply for failure to complete performance in accordance with this Term Sheet and the Agreement.

1.11 "Deliverables" means those items described and itemized in the accompanying Purchase Order and Corresponding Documents, which items Contractor commits to provide to City on the dates specified in the Implementation Plan.

1.12 "Design Specifications" means the written design specifications to be prepared by Contractor to implement the Functional Specifications. The Design Specifications shall include descriptions of each Program to be developed hereunder together with descriptions of the hardware and software environment in which such Programs may be operated and the files or databases, if any, with which such Programs shall function.

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

1.14 "Equipment" means the central processing unit[s] and associated peripheral devices or computer hardware on which the Programs will operate and with which the Programs must be compatible, to be purchased or leased by Contractor for City or provided by City.

1.15 "Errors, Defects, and Malfunctions" means either a deviation between the function of the developed Programs and the documentation furnished by Contractor for the Programs, or a failure of the Programs which degrades the use of the Programs.

1.16 "Fix" means repair or replace source, object, or executable code in the Programs to remedy an Error, Defect, or Malfunction.

1.17 “Functional Specifications” means 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 as defined herein.

1.18 “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.

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

1.20 “Patch” means temporary repair or replacement of code in the Programs to remedy an Error, Defect, or Malfunction. If Contractor will own the Programs and license them to City, patches may be made permanent and released in Subsequent Releases of the Software.

1.21 “Performance Specifications” means the description of the minimum System characteristics and performance, which must be achieved by the Functional Specifications.

1.22 “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.

1.23 “Priority Protocol” means a Priority Protocol that is based on the Priority Category; rules specifying the turnaround time for correcting Errors, Malfunctions, and Defects; escalation procedures; and personnel assignment.

1.24 “Programs” or “Software” means 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 Performance Specifications.

1.25 “Project Schedule” means the schedule for Contractor’s completion of all phases of Work, and the Critical Milestones associated with such completion as specified in this Term Sheet and the Agreement.

1.26 “Proposal” means the written proposal Contractor submitted in response to City’s request for the Services to be performed under this Term Sheet.

1.27 “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 development 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.

1.28 “Review Period” means the time period during which City shall review the completed Work with respect to the scope of work issued pursuant to the accompanying Purchase Order, and give notice to Contractor of its acceptance or rejection of the completed phase.

1.29 “Scope of Work” means the document prepared by Contractor outlining the Services to be performed pursuant to the Purchase Order. The Scope of Work shall include all

items, including, but not limited to: project summary, project managers, notice procedures, Services to be performed, Performance Specifications, Project Schedule and milestones (including Critical Milestones), Deliverables, Documentation, and property rights.

1.30 “Services” means the work performed by Contractor under this Term Sheet and the Agreement, including all services, labor, supervision, materials, equipment, actions, and other requirements to be performed and furnished by Contractor under this Term Sheet and the Agreement.

1.31 “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.

1.32 “Support Services” means the support service performed at the option of City. Support Services include correcting an Error, Defect, or Malfunction; providing telephone and/or online support concerning the installation and use of the Programs; training in the installation and use of the Programs; on-site consulting and application development services; detection, warning, and correction of viruses; and disabled/disabling code.

1.33 “System” means the Programs prepared by Contractor for City and the Equipment on which those Programs operate, the combination of which shall satisfy the requirements set forth in the Performance Specifications.

1.34 “Term Sheet” means this document, the accompanying Purchase Order, all attached appendices, 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.

1.35 “Upgrade” means either an enhancement to the Programs 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.

1.36 “Version Locking” means a mechanism that restricts access to a computer file by allowing only one user or process access at any specific time.

1.37 “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.

1.38 “Work” means 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.

1.39 “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.

Article 2 Term of the Term Sheet

2.1 The term of this Term Sheet shall reflect the term of software development 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 Financial Matters

3.1 **Retention.** The final payment of ten percent (10%) of the software development and license costs shall be paid thirty (30) days after City issues its notice of Acceptance of the System.

Article 4 Services, Software Implementation, and Acceptance

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for in the Appendices of the Agreement, 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 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."

4.2 Software Implementation.

4.2.1 **Program Development.** Subject to the terms and conditions of this Term Sheet and the Agreement, and in consideration for the payments to be made, Contractor agrees to design, develop, and install the Programs in the following discrete and sequential phases. In Phase 1, Contractor will develop Functional Specifications; in Phase 2, Contractor will create the Design Specifications; and in Phase 3, Contractor will code the Programs, install the completed System at City's site, and deliver the Documentation for the System. The Work covered under each phase is specified in the Appendices of the Agreement, Purchase Orders, and Corresponding Documents. Upon completion of Phase 3, the System will be subject to Acceptance Testing to verify conformity with the Design Specifications.

4.2.2 **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 and Sheet and the Agreement (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.

4.2.3 **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.

4.2.4 Change Orders.

(a) **City Proposed Change Order.** The City may at any time, by written order, and without notice to Contractor's sureties, submit a Change Order to Contractor. Within ten (10) 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, the Acceptance Criteria, or any other obligations of Contractor as applicable.

4.3 **Acceptance Procedure.**

4.3.1 **Acceptance of Phases.** Upon completion of Phases of Program development, City shall, within the Review Period, review and give notice to Contractor of City's acceptance or rejection of the specifications of each completed phase of Work. Should City reject the Work of any Phase, then City is entitled to another Review Period upon receipt from Contractor of the revised Phase specifications. In the event that Contractor fails to provide Work for any Phase, which meets the Acceptance Criteria of this Term Sheet and the Agreement during the Acceptance Window, City may, at its option, assess Liquidated Damages per Section 4.7 of the Agreement and/or terminate the accompanying Purchase Order or the Agreement under Section 8.2 of the Agreement, Termination for Default; Remedies.

4.3.2 **Final Acceptance of System.** Upon completion the final phase, City and Contractor shall conduct Acceptance Testing of the System in accordance with the Acceptance Test Plan. City will not be deemed to have accepted any Program or the System until Contractor receives written notice of Acceptance from City.

4.3.3 **Data Conversion.** Contractor shall be responsible for the timely and accurate conversion of City's data to the format required by the Programs or System, and for providing the test data specified in the Acceptance Test Plan or Design Specifications.

4.3.4 **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. (*See Section 4.5 below*)

4.3.5 **Failure to Pass Acceptance Tests.** In the event that City determines that the System fails to meet the standards set forth in the Acceptance Test Plan, City shall promptly report to Contractor each deficiency, and Contractor will correct the reproducible aspects of the problem or failure within the number of days specified in the Appendix A of the Agreement, Purchase Order, and corresponding documents from date of Contractor's receipt of notice of the problem or failure. Problems or failures that do not re-occur or cannot be repeated by Contractor, or by the City in Contractor's presence, shall not be considered a failure. In the event that Contractor cannot achieve System Acceptance within the number of days specified in the Appendices of Agreement, Purchase Order, and Corresponding Documents following the commencement of Acceptance Testing, Contractor shall be in default under this Term Sheet and the Agreement and, in addition to those remedies set forth in Article 8 entitled "Termination and Default", City is further entitled to a refund of all payments made to Contractor under the accompanying Purchase Order and the Agreement.

4.3.6 **Parallel Processing.** The Parties contemplate that parallel processing will be used until both the Programs or the System, and its backup have completed the Acceptance Tests.

4.4 **Documentation Delivery and Training.**

4.4.1 **Documentation Delivery.** Contractor will deliver copies of the completed Documentation for the Programs or the System in accordance with the Appendix A of the Agreement, the Purchase Order, and corresponding documents. The City may withhold its issuance of the notice of final Acceptance until City receives the completed Documentation.

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

4.5 **Project Administration.**

4.5.1 **Project Schedule.** The Project Schedule is set forth in the accompanying Purchase Order and/or Corresponding Documents, and may be amended by mutual agreement between City and Contractor.

(a) **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.

(b) **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.

(c) **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 Project Schedule. 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 the accompanying Purchase Order and Corresponding Documents . In addition to any other remedy provided under this Term Sheet and the Agreement, Contractor’s inability to achieve final Acceptance of the System in accordance with the accompanying Purchase Order and Corresponding Documents will be cause for immediate termination of this Term Sheet and the Agreement, and City shall be entitled to a full refund of any amounts paid to Contractor under this Term Sheet and the Agreement for the portion(s) of the Programs that are not accepted.

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

4.5.3 **Project Managers.** Contractor and City shall each designate a “Project Manager”, who shall be accessible by telephone throughout the duration of the Agreement 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.

(a) The City’s Project Manager will be authorized to make binding decisions for the City regarding this Term Sheet and the Agreement and will: (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. City's Project Manager shall have the right to manage and direct any aspect of the project as may be necessary, in his or her opinion, to safeguard the interest of the City. City's Project Manager shall communicate all of his or her concerns to Contractor's Project Manager. In the event Contractor believes that any direction being given by City's Project Manager shall impair the performance of the project or any phase thereof, Contractor shall immediately inform the City's Project Manager of its concern. Except as specifically provided under this Term Sheet and the Agreement, City's Project Manager's management of the project shall not relieve Contractor of any obligations or liabilities set forth in this Term Sheet and the Agreement and the Appendices or Exhibits thereto.

(b) Throughout the term of this Term Sheet and the Agreement, whenever the Contractor's Project Manager is not on site, he or she must be available by phone or e-mail. Whenever the Contractor's Project Manager will be unavoidably absent or otherwise unavailable by phone or e-mail for more than eight hours, then a substitute Project Manager must be designated to respond to telephone calls and e-mails from the City. Contractor shall use its best efforts to maintain the same Project Manager until final Acceptance of the Programs.

4.5.4 Changing Project Managers. The City and Contractor shall use their best efforts to maintain the same Project Manager until final Acceptance of the System. However, if a Party needs to replace its Project Manager, the Party shall provide the other Party written notice thereof at least forty-five (45) days prior to the date the Project Manager shall be replaced. Such notice shall provide all the required information above. Notwithstanding the foregoing, the Parties have the right to appoint temporary Project Managers in connection with short term unavailability, sick leave, or reasonable vacations. Parties shall notify each other 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.

4.5.5 Qualified Personnel/Staffing. Work under this Term Sheet and the Agreement 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.

4.5.6 Meetings. From the commencement date of the project until the final Acceptance of the Programs, the Project Managers shall communicate at times and locations designated by City to discuss the progress of the Project. Until the final Acceptance of the project, the Project Managers shall communicate, as required by the City, to discuss any operational problems or defects that City has encountered. City shall have the right to call a meeting at any time by providing Contractor forty-eight (48) hours written notice thereof. Such notice shall provide the time, place, and the purpose of the meeting. Contractor and City's project team must be available to meet as often as is necessary to facilitate timely completion of the project.

4.5.7 Inspection. City's Project Manager shall have the right to inspect and/or test, at any time, all Work, Deliverables and materials to be provided for the project, and the manufacture, assembly, and installation of such Deliverables and materials. City's Project Manager's inspection shall be based on compliance with this Term Sheet and the Agreement. City's Project Manager's right to inspect all aspects of the Project shall not relieve Contractor of its obligation to furnish material and workmanship in accordance with this Term Sheet and the Agreement. City's Project Manager may reject any portion of the Project, which fails to meet any applicable standard.

(a) **Defects Post-Inspection.** Notwithstanding any previous inspection, acceptance, or payment by the City for any Work, or Deliverables found to be in non-compliance with this Term Sheet and the Agreement, or found to be defective before final Acceptance of the project, such Work or Deliverables shall be repaired or replaced within a reasonable period of time by Contractor at its own cost and expense.

(b) **Special Testing Tools.** Contractor shall furnish all tools, labor and material, which Contractor deems necessary to inspect any Deliverables, Work, or material. Unless purchased by the City as part of the project, Contractor shall provide all test equipment needed to verify Deliverables or Work at its sole cost and expense. The equipment provided by Contractor for performance test shall currently be certified as "calibrated" by the test equipment manufacturer, or its authorized calibration service agent. Unless purchased by the City, all test equipment shall remain the property of Contractor.

4.5.8 Right to Stop Work. City's Project Manager shall have the right to stop any Work on the project if: (i) City notifies Contractor of a defect in the Work or Deliverables and after such notice, Contractor fails to promptly commence correction of any identified defects in the Work or Deliverables, or (ii) Contractor fails to carry out any portion of the project in accordance with this Term Sheet and the Agreement. All stop work orders from the City shall be in writing and signed by City's Project Manager. City shall specifically state the cause for the order to stop work. Upon receiving a stop work order, Contractor shall immediately cease working on that portion of the Work specified in the order, until the cause for such order has been eliminated. City's right to stop any work on the project shall not give rise to a duty on the part of the City to exercise this right for the benefit of Contractor, or any other person or entity. In the event City's Project Manager orders work to be stopped without proper justification, City shall reimburse Contractor for the actual and direct costs incurred by Contractor due to the delay. Furthermore, Contractor will be entitled to a time extension equal to the number of days of delay that City caused due to the unjustified work stoppage. In no event will a stop work order extend beyond 30 days.

4.5.9 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 this Term Sheet and the conditions upon which access will be granted.

4.6 Maintenance Services. Contractor will provide maintenance services for the Programs in accordance with the terms and conditions of Appendix A of the Agreement, 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.

4.6.1 Infringement Indemnification. 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 and the accompanying Purchase Order may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid under this Term Sheet and the accompanying Purchase Order for the development and license of the infringing Programs.

4.7 Warranties

4.7.1 Warranty of Title. Contractor warrants that the Programs developed pursuant to this Term Sheet and the Agreement will, prior to its transfer to City, be the sole and exclusive property of Contractor.

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

4.7.3 Warranty of Performance Specifications; Warranty Services. Contractor hereby warrants that when fully implemented, the developed Programs, configuration, customization and services performed by Contractor pursuant to this Term Sheet and the Agreement, when fully implemented, including technical and functional system integration that includes planning, fit/gap analysis, design, configuration, enhancements and custom programming, and developed interfaces (collectively "System Integration and Customization"), will perform in accordance with the required functionality defined in the Appendices of the Agreement, Purchase Order, and Corresponding Documents during a one year period following the issuance of written Acceptance by City. Upon City issuing written notice to Contractor of a warranty breach under this section, Contractor shall correct and repair the configuration and customized code provided by Contractor during the Warranty Period, at no charge to the City, within thirty (30) days following the notice, provided that:

(a) The problem encountered occurs within one year of the acceptance of such provided System Integration and Customization.

(b) The root cause analysis indicates the problem is in the system not meeting the System Integration and Customization requirements where the Contractor has responsibility (e.g., a problem caused by the developed, configured or customized COTS software or hardware component not meeting requirements, a defect in the configuration or code created by the Contractor).

Full correction of the system defect is to be completed by Contractor unless otherwise approved by the City, and the corrected code shall be appropriately tested to verify that no regression errors are introduced. Contractor shall warrant against Version Locking due to customization of the system.

Article 5 Termination and Default

5.1 Termination for Convenience

5.1.1 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 Agreement 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.

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.

5.2 **Survival.** This Section and the following Sections of this Term Sheet listed below shall survive termination or expiration of this Term Sheet and the Agreement:

Article 4	Intellectual Property Rights of the Parties
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Article 6 Intellectual Property Rights of the Parties

6.1 **License of the Programs.** Upon receipt of final payment for all Services rendered by Contractor under this Term Sheet and the Agreement, 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.

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

6.3 **Ownership of Underlying Modules.** The foregoing 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.

6.4 **City's Data.** Any data or other materials furnished by the City for use by Contractor under this Term Sheet and the Agreement shall remain the sole property of the City and will be held in confidence in accordance with Section 3.7 ("Warranties") of this Term Sheet. Such materials shall be returned to City upon Acceptance of the Programs. Contractor shall within fifteen (15) calendar days purge or physically destroy all City data it acquired from the City from its servers or files and provide City with written certification within five (5) calendar days that such purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

6.5 **Ownership of Modifications and Enhancement.** If City is getting a licensed software, 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.

6.6 **Competition.** Nothing in this Term and Sheet and the Agreement shall be construed so as to preclude Contractor from developing, using, or marketing software that is competitive with that prepared for City hereunder, irrespective of whether such software is similar in functionality or design, or is otherwise related to the Programs developed by Contractor for City pursuant to this Term Sheet and the Agreement.

6.7 **Royalty Payments.** If applicable, Contractor shall pay to City royalty payments as identified in the accompanying Purchase Order and Corresponding Documents.

Article 7 General Provisions

7.1 **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 people with disabilities. Contractor shall provide the services specified in this Term Sheet and the Agreement 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 people with disabilities in the provision of services, benefits, or activities provided under this Term Sheet and the Agreement 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).

7.2 **Services Provided by Attorneys.** Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

Appendices

A: Maintenance Terms and Conditions

Appendix A
Software Maintenance Terms and Conditions

1. Scope of Service Coverage

a. Contractor shall provide Support Services **and provide Upgrades** during the term of this Maintenance Agreement for the Software.

b. 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.

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.

c. 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.

2. 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.

3. 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 Maintenance Agreement.

4. 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 the 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 did not conform to the requirements of this Maintenance Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

5. Qualified Personnel. Work under this Maintenance Agreement shall be performed only by competent personnel 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. Contractor shall assign adequate personnel resources to provide the level of service within the response times specified in this Maintenance Agreement.