

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

This Software License and Maintenance Term Sheet (“Term Sheet”) is attached, and incorporated as though fully set forth therein, to each Purchase Order for Licensed Software and maintenance 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 “Acceptance” means a 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 4.3.
- 1.2 “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.
- 1.3 “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.
- 1.4 “Contractor” or “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.
- 1.5 “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.
- 1.6 “Errors, Defects, and Malfunctions” means either a deviation between the function of the Software and the Documentation furnished by Contractor for the Software, or a failure of the Software that degrades the use of the Software.
- 1.7 “Fix” means repair or replacement of source, object, or executable code in the Software to remedy an Error, Defect, or Malfunction.
- 1.8 “Licensed Software” or “Software” means one or more of the proprietary computer software programs identified in the Agreement and/or accompanying Purchase Order(s), 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 Agreement and/or accompanying Purchase Order may identify more than one Software product or more than one copy of any product.

1.9 “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.

1.10 “Object Code” means the machine-readable form of the Licensed Software provided by Contractor.

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

1.12 “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 of the Software.

1.13 “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.

1.14 “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.

1.15 “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 Licensed Software 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.

1.16 “Source Code” means the human readable compliable form of the Licensed Software to be provided by Contractor.

1.17 “Specifications” mean the functional and operational characteristics of the Licensed Software as described in Contractor’s current published product descriptions and technical manuals.

1.18 “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.

1.19 “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.

1.20 “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.

1.21 “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.

1.22 “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.

1.23 “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 **License and Maintenance Support Services Term.** 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 and the Agreement. Subject to Section 4.1 (“Grant of License”), the license granted under this Term Sheet and the Agreement shall commence upon Acceptance of the Licensed Software and shall continue in perpetuity unless sooner terminated in accordance with the provisions of this Term Sheet and the Agreement, or during the term outlined in the Agreement or accompanying Purchase Order, unless sooner terminated in accordance with the provisions of this Term Sheet and the Agreement.

Article 3 Financial Matters

3.1 Compensation.

3.1.1 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 Purchase Order and Corresponding Documents 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 Purchase Order and Corresponding Documents 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.

(5) **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 4 License

4.1 Grant of License.

4.1.1 **Grant of License.** Subject to the terms and conditions of this Term Sheet and the Agreement, Contractor grants City a non-exclusive and non-transferable license to use the Licensed Software. 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.

Contractor agrees that in the event it discontinues its obligations under the terms of this Term Sheet and the Agreement, except as expressly provided for in Article 8 (“Termination and Default”) of the Agreement, or ceases to market and/or provide maintenance and Support Services 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 and the Agreement.

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.

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

4.1.3 **Disaster Recovery Copy.** 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 and use such archival copy to restore use of the Licensed Software on a site owned or controlled by City. 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 the existing site.

4.1.4 **Transfer of Products.** City may move the Licensed Software and supporting materials to another City site.

4.1.5 **Documentation.** Contractor shall provide City with the Licensed Software specified in this Term Sheet and the Agreement, and a minimum of two copies of the Documentation per installation. Contractor grants to City permission to duplicate all printed Documentation for City's municipal use.

4.1.6 **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.

4.1.7 **Authorized Modification.** City shall also be permitted to develop, use and modify Application Program Interfaces ("APIs"), macros, and user interfaces. For purposes of this Term Sheet and the Agreement, such development shall be deemed an authorized modification. Contractor shall make no claim under this Term Sheet and the Agreement to ownership of any APIs, macros, or other interfaces developed by or at the direction of the City.

Contractor has no general objection to the City's use of third-party programs in conjunction with the Licensed Software under this Term Sheet and the Agreement. Contractor recognizes that City has and will license third party-programs that City will use with Contractor's products. Based on information provided to Contractor as to the execution of this Term Sheet and the Agreement, Contractor agrees that such use does not constitute an unauthorized modification or violate the licenses granted under this Term Sheet and the Agreement.

4.2 **Delivery.**

4.2.1 **Delivery.** One copy of each of the Licensed Software products in computer readable form shall be shipped to the City not later than thirty (30) 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.

4.2.2 **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.

4.2.3 **Risk of Loss.** If any of the Licensed Software products are lost or damaged during shipment 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.

4.3 **Acceptance Testing.** After Contractor has installed and configured the Licensed Software pursuant to this Term Sheet and the Agreement, 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 8.2 (“Termination for Default; Remedies”) of the Agreement, and shall be entitled to a full refund of the license fee.

4.4 **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.

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

4.6 **Warranties: Conformity to Specifications.** Contractor warrants that when the Licensed Software specified in the accompanying Purchase Order and Corresponding Documents and all updates and improvements to the Licensed Software are delivered to City, they will be free from defects as to design, material and workmanship and will perform 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 or the manufacturer's warranty period, whichever is longer.

4.7 **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:

- 4.7.1 is now or hereafter becomes publicly known;
- 4.7.2 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;
- 4.7.3 is known to the City prior to its receipt of the Licensed Software;
- 4.7.4 is subsequently developed by the City independently of any disclosures made hereunder by Contractor;
- 4.7.5 is disclosed with Contractor’s prior written consent; and
- 4.7.6 is disclosed by Contractor to a third party without similar restrictions.

Article 5 Services and Resources

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

Article 6 Software Maintenance

6.1 Maintenance and Support Services.

6.1.1 **Maintenance and Support Services.** After Acceptance of the Licensed Software and subject to the terms, conditions, and charges set forth in this Section 4.1.1, 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.

6.1.2 **Changes in Operating System.** If City desires to obtain a version of the Licensed Software that operates under an operating system not specified in this Term Sheet and the Agreement, Contractor will provide City with the appropriate version of the Licensed Software, if available, on a ninety (90) day trial basis without additional charge, provided City has paid all maintenance and support charges then due. At the end of the ninety (90) day trial period, City must elect one of the following three options: (i) City may 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) City may 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) City may 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 document(s) to accomplish the above.

6.2 During the term of this Term Sheet and the 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.

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

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

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

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

6.3.1 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.

6.3.2 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.

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

6.3.4 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.

Article 7 Indemnity

7.1 Infringement Indemnification. If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the 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 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 the Agreement 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 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.

Article 8 Survival

8.1 Disposition of Licensed Software on Termination. Upon termination of this Term Sheet for any reason other than as provided for in Section 4.1 ("Grant of License"), if the term of the Software License City has paid for is other than perpetual, 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 CPUs 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 this Section 8.1.

8.2 Rights and Duties upon Termination or Expiration. This Section and the following Sections of this Term Sheet listed below, shall survive termination or expiration of this Term Sheet and the Agreement:

4.1	Grant of License
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