

Amendment No. 4  
to  
Contract No. MA 5600 NS160000005  
for  
QAS Software License and Maintenance  
between  
Experian Marketing Solutions, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be November 1, 2019 through October 31, 2020. Two options will remain.
- 2.0 The total contract amount is increased by \$18,791.35 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 11/01/2015 – 10/31/2016	\$15,459.69	\$15,459.69
Amendment No. 1: Option 1 – Extension 11/01/2016 – 10/31/2017	\$15,567.91	\$31,027.60
Amendment No. 2: Option 2 – Extension 11/01/2017 – 10/31/2018	\$17,044.30	\$48,071.90
Amendment No. 3: Option 3 – Extension 11/01/2018 – 10/31/2019	\$17,896.52	\$65,968.42
Amendment No. 4: Option 4 – Extension 11/01/2019 – 10/31/2020	\$18,791.35	\$84,759.77

- 3.0 By signing this Amendment, the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 4.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: Tara D'Alessandro

Printed Name: Tara D'Alessandro

Authorized Representative

Experian Marketing Solutions, Inc.

53 State Street, suite20

Boston, Massachusetts 52109

[Victor.cerdas@experian.com](mailto:Victor.cerdas@experian.com)

972-390-5261

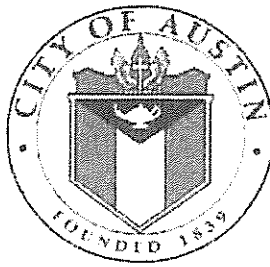
Sign/Date: [Signature]

Xai Xoomsai-Purcell  
Procurement Supervisor

Austin Energy

721 Barton Springs Road

Austin, Texas 78704



Amendment No. 3  
to  
Contract No. 5600 NS160000005  
for  
QAS Software License and Maintenance  
between  
Experian Marketing Solutions, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be November 1, 2018 through October 31 2019. Three (12 month) options will remain.
- 2.0 The total contract amount is increased by \$17,896.52 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 11/01/2015 – 10/31/2016		
	\$15,459.69	\$15,459.69
Amendment No. 1: Option 1 – Extension 11/01/2016 – 10/31/2017		
	\$15,567.91	\$31,027.60
Amendment No. 2: Option 2 – Extension 11/01/2017 – 10/31/2018		
	\$17,044.30	\$48,071.90
Amendment No. 3: Option 3 – Extension 11/01/2018 – 10/31/2019		
	\$17,896.52	\$65,968.42

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: [Signature] 9/11/18

Printed Name: Erica Alexander  
Authorized Representative

Experian Marketing Solutions, Inc.  
125 Summer Street, Suite 1910  
Boston, MA 02110-1615

53 State Street, Suite 20  
Boston, MA 02109

Sign/Date: [Signature]

Printed Name: JAMES T. HOWARD  
Authorized Representative

Sign/Date: [Signature] 9/11/18

Printed Name: Bartley Tyler

City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701



Amendment No. 2  
to  
Contract No. 5600 NS160000005  
for  
QAS Software License and Maintenance  
between  
Experian Marketing Solutions, Inc.  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be November 1, 2017 through October 31 2018. Four options will remain.
- 2.0 The total contract amount is increased by \$17,044.30 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 11/01/2015 – 10/31/2016	\$15,459.69	\$15,459.69
Amendment No. 1: Option 1 – Extension 11/01/2016 – 10/31/2017	\$15,567.91	\$31,027.60
Amendment No. 2: Option 2 – Extension 11/01/2017 – 10/31/2018	\$17,044.30	\$48,071.90

- 3.0 MBE/WBE goals do not apply to this contract.
- 4.0 By signing this Amendment the Contractor certifies that the vendor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this amendment is hereby incorporated into and made a part of the above-referenced contract.

Sign/Date: [Signature] 19 October 2017

Printed Name: Aaron Rothberg  
Authorized Representative  
Experian Marketing Solutions, LLC, formerly known as  
Experian Marketing Solutions, Inc.  
125 Summer Street, Suite 1910  
Boston, MA 02110-1615

Sign/Date: [Signature] 10/24/17

Printed Name: Bartley Tyler  
Authorized Representative

City of Austin  
Purchasing Office  
124 W. 8<sup>th</sup> Street, Ste. 310  
Austin, Texas 78701



Amendment No.1  
of  
Contract No. NS160000005  
for  
QAS SOFTWARE LICENSE AND MAINTENANCE  
between  
EXPERIAN MARKETING SOLUTIONS, INC.  
and the  
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective November 1, 2016 the term for the extension option will be November 1, 2016 to October 31, 2017 and there are 5 remaining options.
- 2.0 The total contract amount is increased by \$15,567.91 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 11/01/15 – 10/31/16	\$15,459.69	\$15,459.69
Amendment No. 1: Option 1 11/01/16 – 10/31/17	\$15,567.91	\$31,027.60

- 3.0 MBE/WBE goals were not established for this contract.
- 4.0 By signing this Amendment the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature and Date:

DocuSigned by:

Michael Wang

10/5/2016

Printed Name: Michael Wang  
Authorized Representative  
Experian Marketing Solutions, Inc.  
125 Summer Street, Suite 1910  
Boston,  
MA 02110-1615

Signature and Date:

Paula Barriffe

Buyer 1,  
City of Austin  
Purchasing Office



**Financial and Administrative Service Department**  
**Purchasing Office**  
124 W. 8<sup>th</sup> St., Austin, Texas, 78701

October 27, 2015

Experian Marketing Solutions, Inc.  
Attn: Ryan Gilbertie  
125 Summer Street, Suite 1910  
Boston, MA 02110-1615

Dear Ryan:

The City of Austin has approved the execution of a contract with your company for QAS Software License and Maintenance.

Responsible Department:	CTM
Department Contact Person:	Robert Aldrich
Department Contact Email Address:	Robert.Aldrich@austintexas.gov
Department Contact Telephone:	512-974-4674
Project Name:	n/a
Contractor Name:	Experian Marketing Solutions, Inc.
Contract Number:	NS160000005
Contract Period:	11/1/2015 - 10/31/2016
Dollar Amount	\$15,459.69
Extension Options:	Six 12-month extension options
Requisition Number:	RQM 5600 15102600066
Solicitation Number:	n/a
Agenda Item Number:	n/a
Council Approval Date:	n/a

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact Robert Aldrich, Contract Manager at 512-974-4674.

Sincerely,

Terry Nicholson  
Senior Buyer Specialist  
Purchasing Office  
Financial and Administrative Service Department

cc: R. Aldrich, CTM  
E. Folco, FSD



## City of Austin FSD Purchasing Office

### Certificate of Exemption

DATE: 05/29/2015

DEPT: Municipal Court

TO: Purchasing Officer or Designee

FROM: Luz Lozano

BUYER: Jonathan Harris

PHONE: (512) 974-4694

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
  - ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
  - ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
  - ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
  - ☐ a procurement for personal, professional, or planning services
  - ☐ a procurement for work that is performed and paid for by the day as the work progresses
  - ☐ a purchase of land or right-of-way
  - ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
  - ☐ a purchase of rare books, papers, and other library materials for a public library
  - ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
  - ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for
  - cooperative purchasing administered by a regional planning commission established under Chapter 391
  - ☐ services performed by blind or severely disabled persons
  - ☐ goods purchased by a municipality for subsequent retail sale by the municipality
  - ☐ electricity
  - ☐ advertising, other than legal notices
  - ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

Data Services we're purchasing are exclusive and proprietary to Experian - QAS and provided through periodic electronic updates and only available through Experian - QAS. A custom Application Program Interface (API) has been written and installed in our Case Management application to work with this service and provides current addresses for our customers so we can make the necessary legal notifications in a timely manner.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: evaluation of other firms, knowledge of market, etc).

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Experian which will cost approximately \$ 15,439.69 (Provide estimate and/or breakdown of cost).

Recommended  
Certification

[Signature] 6/3/2015  
Originator Date

Approved  
Certification

[Signature] 6/3/15  
Department Director or designee Date

\_\_\_\_\_  
Assistant City Manager / General Manager Date  
or designee (if applicable)

Purchasing Review  
(if applicable)

[Signature] 10/19/15 [Signature]  
Buyer Date Manager Initials

Exemption Authorized  
(if applicable)

\_\_\_\_\_  
Purchasing Officer or designee Date

02/26/2013



**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
EXPERIAN MARKETING SOLUTIONS, INC.  
FOR  
QAS SOFTWARE LICENSE AND MAINTENANCE**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Experian Marketing Solutions, Inc. ("Contractor"), having offices at 125 Summer Street, Suite 1910, Boston, MA 02110-1615.

**SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES**

- 1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.
- 1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for providing the commodities identified in Section 2. In the event that the need arises for the Contractor to provide deliverables beyond those stated in the Section 2, the Contractor and the City shall negotiate mutually agreeable terms and compensation for such.
- 1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in delivering the commodities. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress.
- 1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Ryan Gilbertie, Phone: 617-385-6763, Email: Ryan.Gilbertie@experian.com The City's Contract Manager for the engagement shall be Robert Aldrich, Phone: 512-974-4674, Email: Robert.Aldrich@austintexas.gov. The City's and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

**SECTION 2. SCOPE OF WORK.**

- 2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

**SECTION 3. COMPENSATION:**

- 3.1 **Contract Amount.** The Contractor will be paid in the amounts shown below.

Initial 12 month term:	11/01/15 - 10/31/16	\$15,459.69
Option 1:	11/01/16 – 10/31/17	\$16,232.67
Option 2:	11/01/17 – 10/31/18	\$17,044.30
Option 3:	11/01/18 – 10/31/19	\$17,896.52
Option 4:	11/01/19 – 10/31/20	\$18,791.35
Option 5:	11/01/20 – 10/31/21	\$19,730.91
Option 6:	11/01/21 – 10/31/22	\$20,717.46

Maintenance fees are based on the current base rate and the estimated annual CPI increases of 5%. In the event the CPI is less than 5%, the rates shall be adjusted accordingly. Should the base rate change due to extraordinary circumstances such as an increase in the price of the data from the relevant data provider, Contractor will notify the City of the price increase at least sixty (60) days prior to the commencement of the renewal term.

### 3.2 Invoices

3.2.1 The Contractor shall submit separate invoices in duplicate on each purchase order or delivery order after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

3.2.2 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. Invoices shall be mailed to the below address:

	City of Austin
Department	Communication Technology Management or (CTM)
Attn:	Accounts Payable
Address:	PO Box 1088
City, State, Zip Code	Austin, TX 78767

3.2.3 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.4 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.5 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

### 3.3 Payment

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

**3.3.2 If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3 The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of;

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

- 3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment,
- 3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- 3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- 3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
- 3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 **Travel Expenses:** Travel expenses are not authorized under this Contract.

3.6 **Final Payment and Close-Out**

3.6.1 If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the project manager or contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

3.6.2 The making and acceptance of final payment will constitute:

3.6.2.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.2.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**SECTION 4. TERM AND TERMINATION**

4.1 **Term of Contract.** This Contract shall be in effect on November 01, 2015 for an initial term of twelve (12) months and may be extended thereafter for up to six (6) additional twelve (12) month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.2.1 Upon expiration of the contract, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 calendar days unless mutually agreed on in writing).

4.2 **Right To Assurance:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination Without Cause:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 **Fraud:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

## **SECTION 5. OTHER DELIVERABLES**

### **5.1 Equal Opportunity**

5.1.1 **Equal Employment Opportunity:** No Contractor or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the

contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

**5.1.2 Americans With Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

**5.2 Acceptance of Incomplete or Non-Conforming Deliverables:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

**5.3 Delays:**

**5.3.1** The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

**5.3.2** Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

**5.4 Ownership And Use Of Deliverables:** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

**5.5 Rights to Proposal and Contractual Material:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

**5.6 Publications:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

**SECTION 6. WARRANTIES**

**6.1 Warranty - Price**

**6.1.1** The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

**6.1.2** The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

6.1.3 In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

6.2 **Warranty – Services:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.2.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.2.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.2.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

## SECTION 7. MISCELLANEOUS

7.1 **Significant Event:** The Contractor shall immediately notify the Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.1.1 disposal of major assets;

7.1.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this contract;

7.1.3 any significant termination or addition of provider contracts;

7.1.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.1.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this contract;

7.1.6 reorganization, reduction and/or relocation in key personnel such as, but not limited to, customer service representatives or claims adjusters;

7.1.7 known or anticipated sale, merger, or acquisition;

7.1.8 known, planned or anticipated stock sales;

7.1.9 any litigation filed by a member against the Contractor; or

7.1.10 significant change in market share or product focus.

## 7.2 **Right To Audit**

7.2.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.2.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.3 **Stop Work Notice:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

## 7.4 **Indemnity:**

### 7.4.1 Definitions:

7.4.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.4.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.4.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.4.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.4.2 **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

7.5 **Claims:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt

of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

**7.6 Notices:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:

City of Austin, Purchasing Office

ATTN: Elisa Folco, Contract Administrator

P O Box 1088

Austin, TX 78767

To the Contractor:

Experian Marketing Solutions, Inc.

ATTN: Ryan Gilbertie, Contract Manager

125 Summer Street, Suite 1910

Boston, MA 02110-1615

**7.7 Confidentiality:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

**7.8 Advertising:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

**7.9 No Contingent Fees:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**7.10 Gratuities:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this



provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

**7.11 Prohibition Against Personal Interest in Contracts:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

**7.12 Independent Contractor:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

**7.13 Assignment-Delegation:** The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

**7.14 Waiver:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**7.15 Modifications:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

**7.16 Interpretation:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

#### **7.17 Dispute Resolution**

7.17.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written

agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.17.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.18 **Jurisdiction And Venue**: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.19 **Invalidity**: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.20 **Holidays**: The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

**7.21 Survivability of Obligations:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

**7.22 Non-Solicitation:**

7.22.1 During the term of the contract, and for a period of six (6) months following termination of the contract, the Contractor, its affiliate, or its agent shall not hire, employ, or solicit for employment or consulting services, a City employee employed in a technical job classification in a City department that engages or uses the services of a Contractor employee.

7.22.2 In the event that a breach of this paragraph occurs the Contractor shall pay liquidated damages to the City in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation; or (ii) 100 percent of the employee's annual compensation while employed by the City. The Contractor shall reimburse the City for any fees and expenses incurred in the enforcement of this provision.

7.22.3 During the term of the contract, and for a period of six (6) months following termination of the contract, a department that engages the services of the Contractor or uses the services of a Contractor employee will not hire a Contractor employee while the employee is performing work under a contract with the City unless the City first obtains the Contractor's.

7.22.4 In the event that a breach of this) occurs, the City shall pay liquidated damages to the Contractor in an amount equal to the greater of: (i) one (1) year of the employee's annual compensation or (ii) 100 percent of the employee's annual compensation while employed by the Contractor

**7.23 Non-Suspension or Debarment Certification:** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

**7.24 Incorporation of Documents:** Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: <http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>.

**7.25 Order of Precedence:** The Contract includes, without limitation, the Solicitation, the Offer submitted in response to the Solicitation, the Contract award, the Standard Purchase Terms and Conditions, Supplemental Terms and Conditions if any, Specifications, and any addenda and amendments thereto. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order.

7.25.1 any exceptions to the Offer accepted in writing by the City;

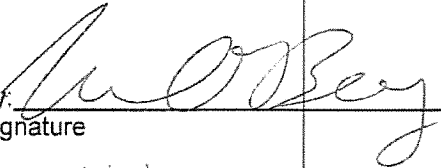
7.25.2 the Supplemental Purchase Terms and Conditions;

7.25.3 the Standard Purchase Terms and Conditions;

7.25.4 the Offer and exhibits; within the Offer, drawings (figured dimensions shall govern over scaled dimensions) will take precedence over specifications or scope of work.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

EXPERIAN MARKETING SOLUTIONS, INC.

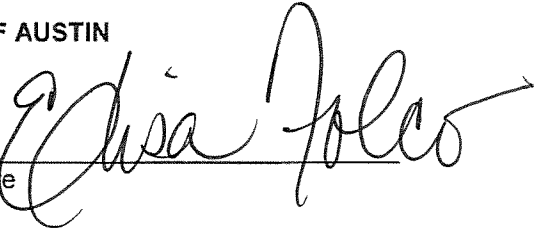
By:   
Signature

Name: Melissa O'Berg  
Printed Name

Title: Commercial Counsel

Date: 10/26/2015

CITY OF AUSTIN

By:   
Signature

Name: Elisa Folco  
Printed Name

Title: Corporate Contract Administrator

Date: 10/26/2015

**List of Exhibits**

Exhibit A	Offer
Exhibit B	QAS Support Agreement
Exhibit C	Data Provider License
Exhibit D	Non Discrimination Certification

Exhibit A  
Offer

Experian Marketing Solutions Inc., 125 Summer St Ste 1910, Boston MA 02110-1515  
T: (888) 322-6201 F: (888) 652-7062 [www.edq.com](http://www.edq.com)

## Renewal Notification

**IMPORTANT:** All pages must be read in accordance with the Experian Data Quality Standard Terms and Conditions.

Prepared For	Robert Aldrich	Account Reference No.	77-AIP6
Customer Name	City of Austin	Quote No.	13590262
Telephone No. (switchboard)	512 974 4674	Quote Date	10/13/15
Fax No.		Account Manager	Ryan Giberne

## This is Not an Invoice

Your Agreement will automatically renew at the below listed fees pursuant to the "Term" provision of the Experian Data Quality Standard Terms and Conditions unless sixty (60) days written notice of termination is served prior to the anniversary date. If you are terminating your contract, all Product must be uninstalled before the end of the current license term. We will invoice you in the month your current license expires.

## PRODUCT LIST

Product Name	Qty	Application	License Start Date	License End Date
QAS Electronic Updates V2.40	1 Session	undefined	11/01/15	11/1/2016
QAS Electronic Updates V2.20	1 Session	undefined	11/01/15	11/1/2016
USA Data for CorrectAddress	1 Annual License	undefined	11/01/15	11/1/2016
QAS Pro 6.90 Server	1 Annual License	undefined	11/01/15	11/1/2016
CorrectAddress Server License (2 CPUs) - API	1 Annual License	undefined	11/01/15	11/1/2016
QAS Pro 6.90 API (USA)	150 Users	undefined	11/01/15	11/1/2016

FINANCIAL SUMMARY<sup>1</sup>

Price includes CPI, does not include Sales Tax. <sup>2</sup>	\$15,459.69
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Initial 12 month term:	11/01/15 - 10/31/16	\$15,459.69
Option 1:	11/01/16 - 10/31/17	\$16,232.67
Option 2:	11/01/17 - 10/31/18	\$17,044.30
Option 3:	11/01/18 - 10/31/19	\$17,896.52
Option 4:	11/01/19 - 10/31/20	\$18,791.35
Option 5:	11/01/20 - 10/31/21	\$19,730.91
Option 6:	11/01/21 - 10/31/22	\$20,717.46

Maintenance fees are based on the current base rate and the estimated annual CPI increases of 5%. In the event the CPI is less than 5%, the rates shall be adjusted accordingly. Should the base rate change due to extraordinary circumstances such as an increase in the price of the data from the relevant data provider, Contractor will notify the City of the price increase at least sixty (60) days prior to the commencement of the renewal term.

**Exhibit B**  
**Service Agreement**

**QAS Worldwide Support Service Policy**

**Note:** The "we", "us" and "our" in this policy refers to QAS Systems Ltd, and the "you" and "your" in this policy refers to the City of Austin, Texas.

**1. Purpose**

This Worldwide Support Service Policy ("Policy") should be read in conjunction with the QAS QuickAddress License Terms and Conditions ("The QAS License Terms") entered into between QAS and your organization. This Policy is the Support Service Policy referred to in the QAS License Terms. Its purpose is to describe our duties and responsibilities in providing you with Technical Support for the Licensed Products. It also lays out your duties and responsibilities. Certain of the terms used in this Policy are defined in the QAS License Terms. This Policy does not apply to the support and maintenance of any bespoke work undertaken by us on your behalf ("Integration Services").

**2. Technical support structure**

Technical support is generally provided by the technical support department within the Country of Operation (i.e. the country in which the relevant system is located upon which the Licensed Products are installed). In circumstances where the technical support department within the Country of Operation is unable to deal with the support call (or where there is no technical support department in your Country of Operation), we will, where possible, utilize our global operations to ensure that the support call is forwarded for resolution to the most appropriate technical support team either within or outside the Country of Operation. In some cases, especially where the Licensed Products are initially purchased by you, in whole or in part, through third party channels ("QAS Business Partners"). Technical Support is provided by the QAS Business Partner. In such cases, your terms for Technical Support are those agreed between you and the QAS Business Partner.

**3. Our obligation to provide technical support**

Under the terms of this Policy and the QAS License Terms:

**We will provide technical support as specified in this Policy in response to your reasonable request (in accordance with the criteria below) during the hours of business specified against the Country of Operation in Appendix II. If you require technical support outside those normal hours of business, we are prepared to discuss with you charges and other terms for the provision of this additional technical support.**

- Your request for technical support will be treated as reasonable if:
- the request is for operational advice by telephone, fax, e-mail, remote access (e.g. Webex) or the support website for the purpose of resolving your difficulties and queries in using the Licensed Products or relating to a fault which you believe is attributable to the Licensed Products originally supplied by us; and
- the version of the Licensed Products for which you are requesting support shall not, at the time of your request, have been superseded by more than two New Versions which have been made available to you; and
- the request conforms with the operating procedures and requirements set out in this Policy as updated from time to time; and no Initial License Fees or Renewal Fees payable by you shall be overdue and unpaid at the time of the request.

**We do not provide technical support for the following:**

- The systems (software or hardware) on which the Licensed Products are running.

- Any modifications made to the Licensed Products, other than those made by us.

#### **4. Technical Support Calls**

##### **4.1 Description**

A Technical Support Call is a request logged by you with our technical support department for operational advice for the purpose of resolving your difficulties and queries in using the Licensed Products.

##### **4.2 Procedure**

Where possible, all Technical Support Calls are taken through to resolution at the time they are placed. In circumstances where all technical support analysts are busy, Technical Support Calls will be placed in a queue and dealt with by the first available analyst. Technical Support Call details are entered by us into a HelpDesk system that automatically generates a log number. You should ask for and note the log number for future reference.

##### **4.3 Call Resolution**

We will endeavor to resolve Technical Support Calls within 1 working day.

#### **5. Error Correction Calls**

##### **5.1 Description**

An Error Correction Call is a Call logged by you with our Technical Support Department relating to a fault which you believe is attributable to the Licensed Products originally supplied by us. Support for the purpose of Error Correction can only be provided if you have a support and maintenance agreement with the manufacturer(s) of the hardware and operating system that the Licensed Product is installed onto, and for any software applications that the Licensed Product interacts with.

##### **5.2 Procedure**

Error Correction Call details are entered by us into a HelpDesk system that automatically generates a log number. You should ask for and note the log number for future reference. At the same time, we shall prioritize the Error Correction Call with you as explained below.

##### **5.3 Call prioritization**

When logging an Error Correction Call, you must ensure that the Call is prioritized and that the priority is agreed with us at the time of placing the Error Correction Call. Call priorities have the following definitions

##### **Priority Description**

Priority 1 - A problem with the Licensed Product has caused your system to be unavailable to all users and the inability to use that system critically impacts your operations.

Priority 2 - A problem with the Licensed Product has caused the Licensed Product to be unavailable to all users or a problem with the Licensed Product has caused a business critical component of your system to be unavailable to all users and the inability to use the Licensed Product or that component critically impacts your operations.

Priority 3 - A problem with the Licensed Product has resulted in one particular individual being unable to carry out his or her operations.

##### **5.4 Call resolution**

If the Error Correction Call is capable of resolution by telephone, e-mail, fax or remote access (e.g. Webex), then the solution will be provided as follows:

##### **Priority Resolution**

Priority 1 - Within 4 working hours

Priority 2 - Within 2 working days

Priority 3 - Within 7 working days



If we determine that the Error Correction Call is not capable of resolution as above, we will agree with you a course of action to ensure that the Error Correction Call is resolved as quickly as possible. Possible courses of action include upgrading to a later release or version of the Licensed Product, installing the latest version of applicable data, work arounds or replacement software or media.

#### **5.5 Site visit criteria**

Where QAS has a technical support department in your Country of Operation, we will make a site visit within two working days of you requesting one, at no additional charge, if the following criteria are satisfied:

- you notify us that there is a fault with one of the Licensed Products; and
- such fault can reasonably be attributed to such Licensed Products originally supplied by us; and
- telephone, email and remote access support has failed or is unlikely to rectify the fault so notified; and
- it is likely that the fault can be rectified by a site visit. Where we make a site visit which does not satisfy such criteria or where your acts or omissions have caused any such failure or where such failure is due to third party software, hardware or data not being part of the Licensed Products, we shall have the right to levy a reasonable charge for the site visit, in accordance with our then current daily rates

#### **5.6 Escalation**

When resolution of the Error Correction Call exceeds or is likely to exceed the time scales identified in this section, the Error Correction Call is escalated by us to the appropriate level within QAS. At each stage of the escalation process, you will be kept advised as to progress. Should you wish to escalate an Error Correction Call yourself, you may do so at any time by contacting the Support Services Manager.

#### **6. Your responsibilities**

These responsibilities have been listed to help both you and ourselves to progress calls as effectively as possible. You should ensure that:

- The Licensed Product has been installed and configured following the guidelines provided in the relevant Licensed Product documentation
- Users are properly trained in the use of the Licensed Product and associated user applications (e.g. database) together with the operating system being used.
- A nominated user has been appointed to act as the contact for all communications relating to support between your organization and us.
- You are safely backing up, and are capable of restoring, configuration files, source code, executables and other variable data. Backups should be made prior to undertaking any changes to the system
- For integrated product, you should ensure that source code, development documentation and trained staff are available to you so that you can implement any changes that may be required. Where an accreditation process is available, you should ensure that your integration meets the accreditation criteria.
- For integrated product, you should ensure that the Licensed Product has been integrated in such a way that its failure does not cause the application it has been integrated into to become inoperative.
- The latest version of all licensed data supplied by us has been installed and is operational
- The version of the Licensed Product which you are using is not more than two versions old.
- Available New Releases for the Licensed Products have been implemented by you.

- New Versions and New Releases of the Licensed Products are tested to your satisfaction in a suitable test environment prior to being implemented in your 'live' or 'production' environment.
- All reasonable instructions provided by us are implemented
- Appropriate equipment (such as modem, internet access, communication software and e-mail account) is available for remote access where this facility is requested by us
- We have been provided with reasonable notice of any changes to your systems that may affect the provision of these services.

**At the time of placing calls, you should ensure that:**

- Details identified on the support call log form attached as Appendix I are available.
- The Licensed Product installation media are available.
- All required access rights and passwords are available and the location of the data and program files is known to the user placing the Technical Support or Error Correction Call

**7. Appendix I - Support Call Log Form**

**QAS SUPPORT CALL LOG FORM**

Call Log Number \_\_\_\_\_ Please request this from the Support Analyst  
Date of Call \_\_\_\_\_ Time of Call \_\_\_\_\_ Call Priority \_\_\_\_\_

**Your Company and Contact Details**

Company Name \_\_\_\_\_ Account Ref \_\_\_\_\_  
Your Name \_\_\_\_\_  
Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_  
Email Address \_\_\_\_\_

**QAS Software Details (Use Help About or your system information screen)**

QAS Software \_\_\_\_\_  
Version \_\_\_\_\_  
Installation and latest Data Media Available? \_\_\_\_\_ PAF Version \_\_\_\_\_  
Is Product Integrated? \_\_\_\_\_ Integrator \_\_\_\_\_  
Application integrated into \_\_\_\_\_

**Workstation Details (from your IT department)**

Hardware Platform \_\_\_\_\_ Operating System \_\_\_\_\_  
Additional Information \_\_\_\_\_

**Network/Server Details (from your IT department)**

Hardware Platform \_\_\_\_\_ Operating System \_\_\_\_\_  
Additional Information \_\_\_\_\_  
Underlying Application1 Details (from your IT department) \_\_\_\_\_

**Support Call Details**

\_\_\_\_\_

The Underlying Application is the software application the Licensed Product communicates with to exchange QAS data (e.g. addresses)

**8. Appendix II - Support Locations and Hours of Business**

All times are local unless otherwise stated. Telephone, fax and email contact details may be found in the manuals or other delivery documentation accompanying the Licensed Products or as advised to you from time to time

**Country of Operation Support Locations and Hours of Business**

Australia and Singapore Between 08:30 and 18:00 Monday to Friday except public holidays in the State in which the relevant QAS office is located (including the afternoons of the working days preceding Christmas Day and New Years Day). Technical Support is provided from our offices in Sydney, New South Wales and Melbourne, Victoria.

United Kingdom, France and the Netherlands Between 08:30 and 18:00 Monday to Friday except public holidays in England and Wales, and the afternoons of the working days preceding Christmas Day and New Years Day. Technical Support is provided from our offices in London

USA and Canada Technical Support is provided from our offices in Boston, Massachusetts, between 08:30 and 18:00 (Eastern Time) Monday to Friday except State of Massachusetts public holidays. Technical Support is provided from our offices in San Francisco, California, between 08:30 and 18:00 (Pacific Time) Monday to Friday except State of California public holidays.

All Others Technical Support is provided, in English, from our offices in London during the United Kingdom hours of business.

[www.qas.com](http://www.qas.com)

**Exhibit C**  
**Data Provider License**

**Note:** The "we", "us" and "our" in this Data Provider License refers to QAS Systems Ltd, and the "you" and "your" in this policy refers to the City of Austin, Texas.

We hold a non-exclusive license from the United States Postal Service ("USPS") which authorizes us to license the USPS Data. In return for the License Fee(s) which you pay for the Licensed Products, we grant you a personal non-exclusive License to use the USPS Data incorporated within the Licensed Products, and on the following terms and conditions:

**Definitions**

"USPS Data" covers the constantly updated file of Zip+4 and City State data for the United States of America produced by the USPS and provided to you in our proprietary format. It also includes any accompanying written materials that have been produced by us. Words and expressions defined in the QuickAddress Worldwide License Terms and Conditions ("the Agreement") shall bear the same meaning herein and shall be incorporated by reference.

**1. Duration**

This License commences on the Effective Date, as specified in the Contract and continues until the Agreement is terminated.

**2. Fees**

We shall include in our Initial and Annual License Fees to you, an amount for the fees due to USPS for use of the USPS Data. Payment by you of our invoices discharges your liability to USPS for the relevant annual license fees. The license fee for the USPS Data incorporated within our Initial and Annual License Fees is neither established, controlled or approved by USPS.

**3. Ownership of the USPS Data**

You own the magnetic or other physical media on which the USPS Data is supplied to you, but USPS retains title and ownership of the USPS Data recorded on the original media and all subsequent copies of the USPS Data, regardless of the form or media in or on which the original and other copies may exist. This License is not a sale of the original USPS Data or any copy. The provisions of this clause shall continue to operate after the termination of the Agreement.

**4. Trademarks**

This Data Provider License does not grant or imply any grant of a license to use any trademark owned by USPS or us. You shall not remove any proprietary notices (including, but not limited to Trade Marks or Service Marks of USPS and ourselves) placed on the USPS Data or Licensed Products or on reports generated through the use of the USPS Data or Licensed Products or on any media on which the same are supplied.

**5. Restrictions in copying the USPS Data**

The USPS Data is copyrighted by USPS. Unauthorized copying of the USPS Data, including USPS Data that has been modified, merged or included with the Licensed Products is expressly forbidden. You may be held legally responsible for any copyright infringement that is caused or encouraged by your failure to abide by the terms of the Agreement.

**6. License Restrictions**

You acknowledge that the restrictions on use set out in clause 7 of the Agreement apply to the USPS Data as if they were set out here in full. USPS Data that is more than 105 days old (calculated by reference to the issue date on the data CD) is not authorized for use by you without written permission from us.

#### **7. Grant of License**

We reserve all rights not expressly granted to you.

#### **8. Limited Liability**

YOU ACKNOWLEDGE THAT USPS IS NOT LIABLE IN ANY WAY IN RESPECT OF THE USPS DATA, THE LICENSED PRODUCTS AND ANY SERVICES PROVIDED BY US OR OUR BUSINESS PARTNERS (AS THE CASE MAY BE) TO YOU.

### **QAS License Terms and Conditions**

**Note:** The "we", "us" and "our" in this License Agreement refers to QAS Systems Ltd, and the "you" and "your" in this policy refers to the City of Austin, Texas.

#### **QUICKADDRESS® LICENSE TERMS AND CONDITIONS**

This license Agreement is an agreement between the City of Austin, Texas and QAS Ltd, and covers your license for use of the Licensed Programs, Documentation and the Data we provide to you from time to time. Your use of the Data as well as other particular uses of the Licensed Products may be governed by third party Data Provider Licenses and other terms and conditions which can be viewed on Our Website and which form part of this License Agreement. Defined terms are found in **section 19**

#### **1 License**

By installing and using the Licensed Products, you acquire and agree to a non-exclusive license to use the Licensed Products subject to the terms of this Agreement

#### **2 Term**

The term of this Agreement shall be as set forth in the Contract.

#### **3 Payment**

**3.1** In consideration for the license to use the Licensed Products the City paid the License Fee pursuant to Contract #S040295.

**3.2** In consideration for the license to use the Licensed Products for an Additional Term, you agree to pay to us the Renewal Fee in accordance with the Contract.

**3.3** We may increase the Renewal Fee in respect of an Additional Term by giving you notice in writing at least sixty (60) days prior to the commencement of that Additional Term:

(a) by an amount which represents the proportionate increase (if any) in the Consumer Price Index published by the US Bureau of Labor Statistics (U.S. All items average);

during the most recent period of twelve months (for which the index provides figures) prior to the date of the notice; and/or (b) by an amount which reflects any New Versions you have installed; and/or

(c) by an amount considered by us to be reasonable if we determine that the existing Renewal Fee does not give us an appropriate return when compared to returns from

other of our customers, but in no event will any such increase be greater than ten (10) percent of the previous Renewal Fee; and/or

(d) by an amount sufficient to pass on any increase in the price of the Data notified to us by the relevant Data Provider

**3.4** Unless otherwise agreed in writing, all fees payable under or in relation to this Agreement are exclusive of all taxes, duties and government charges. You are responsible for all taxes, duties and government charges, other than taxes, duties and government charges based on our income. If any such new or increased tax, duty or government charge is assessed, we will issue an invoice for the increased tax, duty or charge, and the invoice shall be payable within thirty (30) days of the date of invoice. The City is a tax exempt entity and will provide Contractor proof of such upon written request.

#### **4 Ownership**

This Agreement does not convey to you any intellectual property or other ownership rights in the Licensed Products.

## 5 Delivery and risk

5.1 On or before the Effective Date we will deliver to you the agreed number of Licensed Products on the agreed media. Any Data Updates, New Releases and New Versions delivered to you will also be delivered on the agreed media.

5.2 Title and risk of loss or damage in the media passes to you on delivery.

## 6 Installation

You are responsible for installing the Licensed Programs and Data on your equipment. We will assist you with installation in accordance with **section 7** - Technical support. You must install the Licensed Programs and Data in accordance with the Documentation.

## 7 Technical support

7.1 We will provide you with support services relating to the Licensed Products in accordance with our Support Services Policy attached hereto as Exhibit A. We may amend such policy from time to time by giving you at least twelve (12) months notice, such notice to be provided on Our Website. You acknowledge that the provision of support services is conditional upon you complying with your responsibilities as set out in our Support Services Policy.

7.2 Charges for any services not included within this Agreement will be invoiced to you, payable within thirty (30) days of the date of invoice. These charges will be at our rates as may exist from time to time and which we will notify to you prior to the provision of the services.

7.3 We are not obliged to provide you with support services relating to versions of the Licensed Products which meet the conditions specified in **sections 2.9.4 (i) and 2.9.4 (ii) in the Contract**.

## 8 Warranties

8.1 Subject to the terms and conditions of this Agreement, we warrant that the Licensed Programs will conform to the description specified in the Documentation provided that the Licensed Programs are properly used in accordance with the Documentation and on the appropriate operating system and provided also that you are in compliance with your responsibilities as set out in our Support Services Policy. Where the Licensed Programs do not so conform and you can identify to us the failure to conform we will replace the Licensed Programs with Licensed Programs that do so conform. The replacement of the Licensed Programs with Licensed Programs which conform to the description specified in the Documentation will be our sole obligation and liability relating to a failure of the Licensed Programs to conform to the description specified in the Documentation notwithstanding any other provision of this Agreement.

**8.2 EXCEPT AS SET FORTH IN SECTION 8.1 ABOVE, WE DISCLAIM ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PRODUCTS, INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. WE SPECIFICALLY DISCLAIM ANY WARRANTY THAT THE FUNCTIONS CONTAINED IN THE LICENSED PRODUCTS WILL MEET YOUR REQUIREMENTS OR WILL OPERATE IN COMBINATIONS OR IN A MANNER SELECTED FOR USE BY YOU, OR THAT THE OPERATION OF THE LICENSED PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE.**

8.3 Our warranties in this Agreement are conditional upon:

- (a) you complying with your obligations under this Agreement;
- (b) no alterations being made to the Licensed Products by any person other than us; and
- (c) no incorrect use, abuse or corruption of the Licensed Products by you.

## 9 Liability and indemnification

9.1 You acknowledge that in entering into this Agreement you have not relied in any way on our representations, descriptions, illustrations, specifications, skill or judgment except as expressly specified in this Agreement and that you have satisfied yourself as to the condition and suitability of the Licensed Products for your purposes. You acknowledge that the Licensed Products have not been developed to meet your particular requirements.

9.2 IN NO EVENT SHALL WE BE LIABLE TO YOU FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, MULTIPLE OR OTHER INDIRECT DAMAGES, OR FOR LOSS OF PROFITS, LOSS OF DATA OR LOSS OF USE DAMAGES, ARISING OUT OF THIS AGREEMENT, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, STATUTE, STRICT LIABILITY OR OTHERWISE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES.

9.3 Prior to making any claim against us for breach of this Agreement, negligence or any other action, you must give us a reasonable opportunity to remedy the defect or breach the subject of the claim. We will not be liable for any such defect or breach which we have remedied within a reasonable time.

9.4 We will indemnify you and keep you indemnified against all and any demands, claims, actions and proceedings ("Claims") made by any third person alleging that the Licensed Programs infringe the intellectual property rights of any third party provided that:

- (a) you must advise us in writing immediately you become aware of any Claims against you that such use infringes the third party's intellectual property rights
- (b) you give us immediate and complete control of such Claims;
- (c) you give us all reasonable assistance in relation to such Claims; and
- (d) the Claims do not arise as a result of your use of the Licensed Programs or Documentation in conjunction with other programs or items we have not approved

9.5 In the event that any Licensed Program is held in a suit or proceeding to infringe any intellectual property right of a third party, and the use of such Licensed Program is enjoined, or we reasonably believe that it is likely to be found to infringe or constitute a misappropriation, or likely to be enjoined, then we may, at our sole cost and expense, either (a) procure for you the right to continue using such Licensed Program, (b) modify such Licensed Program so that it becomes non-infringing, without affecting the basic functionality of such Licensed Program, provided, however, that if (a) and (b) are not reasonably practicable, we shall have the right, in our sole discretion, to terminate this Agreement with respect to such Licensed Program. Upon such termination we will refund to you the proportionate amount of the relevant License Fees you have paid to us to use the relevant Licensed Programs referable to the balance of the relevant period.

9.6 We will have no obligation for any claim of infringement arising from: (a) any combination of the Licensed Programs with other programs, data or equipment where such infringement would not have occurred but for such combination; (b) the adaptation or modification of the Licensed Programs, where such infringement would not have occurred but for such adaptation or modification; (c) the use of the Licensed Programs in an application for which it was not designed or intended, where such infringement would not have occurred but for such use; (d) your continued use of a version of the Licensed Programs other than the most recently released version, where such infringement would not have occurred if such most recently released version had been used; or (e) a claim based on intellectual property rights owned by you or any of your affiliates.

9.7 The above indemnity states our entire liability in respect of the infringement of the intellectual property rights of any third party. This indemnity will not apply to the Data.

## 10 Termination

See Sections 4.4 Termination for Cause and 4.5 Termination Without Cause for the number of days required for written notice in cancellation of contract.

10.1 We may ~~terminate~~ terminate this Agreement (or part of it in respect of a particular Licensed Product) by notice in writing to you if:

- (a) you materially breach any term or condition of this Agreement which is capable of remedy and fail to remedy that breach within thirty (30) days of being notified of the breach in writing;
- (b) you materially breach any term or condition of this Agreement which is incapable of remedy;
- (c) you fail to pay any fee payable under this Agreement within thirty (30) days of the due date;
- (d) our right to distribute any of the Data is terminated for any reason or expires;
- (e) we decide, for any reason, not to continue distributing any of the Data and give you at least twelve (12) months notice in writing of such discontinuance; or
- (f) you become insolvent, file or have filed against you a petition under any chapter of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq (or any similar petition under any insolvency law of any jurisdiction), propose any dissolution, liquidation, composition, financial reorganization or recapitalization with creditors, make an assignment or trust mortgage for the benefit of creditors, or if a receiver, trustee, custodian or similar agent is appointed or takes possession with respect to any of your property or business.

10.2 You may terminate this Agreement (or part of it in relation to a particular Licensed Product) by notice in writing to us if:

- (a) we materially breach any term or condition of this Agreement which is capable of remedy and fail to remedy that breach within thirty (30) days of being notified of the breach in writing;
- (b) we materially breach any term or condition of this Agreement which is incapable of remedy;
- (c) we become insolvent, file or have filed against us a petition under any chapter of the United States Bankruptcy Code, 11 U.S.C. § 101 et seq (or any similar petition under any insolvency law of any jurisdiction), propose any dissolution, liquidation, composition, financial reorganization or recapitalization with creditors, make an assignment or trust mortgage for the benefit of creditors, or if a receiver, trustee, custodian or similar agent is appointed or takes possession with respect to our any of our property or business; or
- (d) you give us written notice of termination at least thirty (30) days prior to the next Renewal Date, in which case such termination will be effective on the next Renewal Date.

10.3 If this Agreement (or part of it in relation to a particular Licensed Product) is terminated, you must immediately stop using the relevant Licensed Products, permanently erase the Licensed Programs, Data and, all related files from your computer and, at your cost, immediately return all copies of the Licensed Products to us and certify to us that you have complied fully with this section. If only part of this Agreement is terminated, this section applies to the Licensed Products subject to such termination.

10.4 If this Agreement (or part of it) is terminated by us because our right to distribute the Data is terminated or expires or because we decide, for any reason, not to continue distributing the Data, we will refund to you the proportionate amount of the relevant License Fees you have paid to us to use the relevant Data referable to the balance of the relevant period.

10.5 Termination of this Agreement (or part thereof) is without prejudice to any rights which may have accrued prior to termination.

## 11 Performance

We may perform our obligations under this Agreement through third parties who will perform those obligations on our behalf.

## 12 Geographic scope

Use by you of the Licensed Products outside any countries referred to in the Order Confirmation (including in any Special Terms) could breach the terms of applicable Data Provider Licenses and you would not be entitled to technical support services in non agreed countries.

## 13 QAS Business Partners



We have agreements with QAS Business Partners. When you order Licensed Products marketed to you by a QAS Business Partner, we license the Licensed Products to you under this Agreement. The QAS Business Partner, rather than QAS, is responsible for offering support services to you unless we agree otherwise. You acknowledge that the terms of this Agreement apply to the Licensed Products so ordered by you from a QAS Business Partner. We are not responsible for:

- (a) the actions, statements or representations of QAS Business Partners;
- (b) any additional obligations they have to you;
- (c) any products or services which they supply to you under their arrangements with you; or
- (d) any failure or breach of agreement by any QAS Business Partner.

#### 14 Assignment

See Section 7.13, Assignment-Delegation

~~renew, mortgage or license all or any part of this Agreement or any of it in any way without our prior written consent which consent will not be unreasonably withheld in the event of an assignment or transfer of this Agreement in connection with your sale of all or substantially all of the business to which this Agreement relates. We may assign or novate any of our rights, benefits or obligations under this Agreement to any other person. We will give you written notice of any such assignment or novation.~~

#### 15 Waiver

Failure or neglect by either party to enforce at any time any of the provisions of this Agreement is not to be construed or deemed to be a waiver of that party's rights under this Agreement.

#### 16 Governing law and jurisdiction

See Section 7.18, Jurisdiction and Venue

~~ed under the laws of the Commonwealth of Massachusetts without regard to application of the United Nations Convention on Contracts for the International Sale of Goods. The parties agree with respect to the Agreement and the relationship between the parties.~~

~~46.2 Both parties hereto consent to the exclusive jurisdiction of the state and federal courts of the United States located in Suffolk County, Massachusetts in connection with any controversy arising out of the operation of this Agreement and agree not to bring any action in any other jurisdiction.~~

#### 17 Confidentiality

There may be instances where the City must disclose information as required by law.

17.1 Where any Confidential Information is provided under this Agreement, the recipient agrees that:

- (a) they will not divulge such Confidential Information to any third party without the prior written consent of the disclosing party;
- (b) they will only divulge the Confidential Information to those employees who are directly involved in the purposes for which it was provided;
- (c) they will ensure that such employees are aware of and comply with the terms of this section; and
- (d) they will use such Confidential Information only for the purposes of this Agreement.

17.2 The provisions of section 17.1 will not apply to:

- (a) Information in the public domain otherwise than by breach of this Agreement
- (b) Information obtained from a third party who is free to divulge that information
- (c) Information demonstrated to be already within the knowledge of the recipient at the time of disclosure

#### 18 Miscellaneous terms

~~(a) A reference to any Act or regulation including a reference to that Act or regulation as amended, updated or consolidated from time to time and any replacement or substituted Act or regulation.~~

~~(b) If any Licensed Product is acquired by or on behalf of a unit or agency of the United States government, the Licensed Product is provided as "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement to the contrary, the government's rights with respect to such Licensed Product are limited by the terms of these License Terms and Conditions, pursuant to FAR § 12.212(d) and/or DFARS § 227.7202-4(c), as applicable.~~

~~(c) Neither you nor we (each a "Delayed Party") will be liable for any failure or delay in the Delayed Party's performance under this Agreement due to any cause beyond the Delayed Party's reasonable control, including acts of war, acts of God, earthquakes, flood, fire, embargo, riot, sabotage, labor shortage or dispute, governmental act or failure of third party power or telecommunications networks.~~

## 19 Definitions

**"Additional Term"** means a twelve (12) month period.

**"Agreement"** means the terms and conditions of this Exhibit, any Data Provider License and any document incorporated by specific reference including any terms and conditions located on Our Website.

**"Authorized Use"** means the number of Users, Clicks or Servers (as applicable) within your organization which are authorized to use the Licensed Products, such number to be specified in the Order Confirmation. The City purchased a site license for the Licensed Products listed in the Contract.

**"Click"** means the display of a record or part of a record in response to the entry of a query to the Licensed Products.

**"Confidential Information"** means any and all information relating to the affairs and/or business of either you or us and/or our respective customers, suppliers, clients or group companies in or on any medium or format, including trade secrets, operations, processes, plans, intentions, product information, prices, know-how, designs, employee lists, customer lists, prospective customer lists, market opportunities and transactions. Without limiting the foregoing, our Confidential Information includes the Licensed Products.

**"Customer Data"** means any data or information provided by you in connection with this Agreement, including personal data such as an individual's contact details.

**"Data"** means the information or data provided as part of or in conjunction with the Licensed Programs, which information or data is ordered by you as specified in the Order Confirmation. The information or data includes any Data Updates.

**"Data Provider"** means the owner of the Data or the person who has the right to license or provide the Data for use by third parties.

**"Data Provider License"** means the specific terms and conditions of a Data Provider relating to the use of that Data Provider's Data, as set out on Our Website.

**"Data Update"** means an update to the Data supplied to you under this Agreement and included in the Initial License Fee and Renewal Fee.

**"Documentation"** means the user guide, operational manual and any other materials relating to the use or operation of the Licensed Programs as provided to you.

**"Licensed Products"** means the Licensed Programs, the Documentation and the Data.

**"Licensed Programs"** means the object or executable code of the "QuickAddress" computer programs ordered by you and as specified in the Order Confirmation, including any New Release.

**"New Release"** means any maintenance release relating to the Licensed Programs including error fixes, minor upgrades and patches (but not including New Versions), which we make available to you under this Agreement or otherwise and which are included in the Initial License Fee and Renewal Fee;

**"New Version"** means a new version (as determined by us) of the Licensed Products (or part thereof) which we make available to you under this Agreement or otherwise but which is not included in the Initial License Fee or Renewal Fee.

**"Order Confirmation"** means the completed form entitled "Software Order Confirmation".

**"Our Website"** means [www.qas.com/legal](http://www.qas.com/legal) or such other URL as notified to you.

**"QAS Business Partner"** means an organization authorized by us to market certain of the Licensed Products.

**"Renewal Date"** means the date of expiry of the Initial License Period or of any subsequent Additional Term.

**"Renewal Fee"** means the fee specified as such in the Order Confirmation (as increased from time to time in accordance with this Agreement).

**"Server"** means a server version of the Licensed Programs.

**"Service Bureau"** means a business which processes data for or on behalf of third parties, including through the use of the Internet or other electronic based services.

**"Special Terms"** means any terms or conditions specified as such in the Order Confirmation.

**"Support Services Policy"** means our support services policy located on Our Website which sets out the terms and conditions on which we will provide technical support services to you

**"User"** means a personal computer, workstation, terminal or peripheral device within your organization which can access either directly or indirectly any of the Licensed Programs or any part of the Data.

**"we"** or **"us"** or **"our"** means the QAS company specified in the Order Confirmation

**"you"** or **"your"** means the customer specified in the Order Confirmation.

**EXHIBIT D**  
**City of Austin, Texas**  
**EQUAL EMPLOYMENT/FAIR HOUSING OFFICE**  
**NON-DISCRIMINATION CERTIFICATION**

**City of Austin, Texas**  
**Human Rights Commission**

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

**Sec. 4-2 Discriminatory Employment Practices Prohibited.** As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

**City of Austin**  
**Minimum Standard Non-Discrimination in Employment Policy:**

*As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.*

*The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment,*

recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 26<sup>th</sup> day of October, 2015

CONTRACTOR

Authorized  
Signature

Title

Expensan Marketing Solutions, Inc.  
[Signature]  
Commercial Counsel