Amendment No. 5
to
Contract No. NS160000051
For
TeamMate Software and Support
between
Wolters Kluwer Financial Services Inc.
and the
City of Austin

1.0   The City hereby amends the Contract as follows:

Revise Total Contract Amount to an amount not to exceed $564,970.24. This is an addition of $439,947.88.

Extend Contract Term by 60 months, from August 23, 2018 to August 22, 2023.

Add Austin Water services per the attached Order Form.

2.0   The total contract authorization is recapped below:

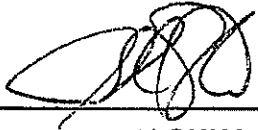| Action | Action Amount | Total Contract Amount |
|---|---|---|
| Initial Term:<br>10/11/2015 – 10/10/2016 | $20,245.00 | $20,245.00 |
| Amendment No. 1: Administrative increase to the current Contract Term 7/1/2016 | $30,600.00 | $50,845.00 |
| Amendment No. 2: Option 1 – Extension<br>10/11/2016 – 10/10/2017 | $21,257.25 | $72,102.25 |
| Amendment No. 3: Administrative increase to the current Contract Term 7/1/2017 | $30,600.00 | $102,702.25 |
| Amendment No. 4: Option 2 – Extension<br>10/11/2017 – 10/10/2018 | $22,320.11 | $125,022.36 |
| Amendment No. 5: Extend Contract five years; add Austin Water to Contract<br>8/23/2018 – 8/22/2023 | $439,947.88 | $564,970.24 |

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.

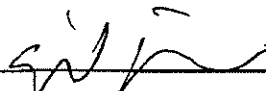5.0   All other terms and conditions remain the same.

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

Sign/Date: _____ 07/05/2018    Sign/Date: _____ 9/20/18

Printed Name: **JOSHUA SKATTUM**    Printed Name: _____
Authorized Representative **SUPERVISOR CUSTOMER SUPPORT**

Authorized Representative
City of Austin
Purchasing Office

Wolters Kluwer Financial Services Inc.
P.O. Box 842014
Boston, MA 02284-2014

Amendment No. 4
to
Contract No. NS160000051
For
TeamMate Software and Support
between
Wolters Kluwer Financial Services Inc.
and the
City of Austin

1.0    The City in agreement with the Vendor hereby amends the scheduled payments/options from a base term starting on June 15, 2016 to the correct base term starting October 11, 2015.

2.0    In addition to the terms being changed, the total contract amount is increased by $22,320.11. The total contract authorization is recapped below:

| Action | Action Amount | Total Contract Amount |
|---|---|---|
| Initial Term: 10/11/2015- 10/10/2016 | $20,245.00 | $20,245.00 |
| Amendment No. 1: Administrative increase to the current Contract Term  7/1/16 | $30,600.00 | $50,845.00 |
| Amendment No. 2: Option 1 – Extension 10/11/2016 – 10/10/2017 | $21,257.25 | $72,102.25 |
| Amendment No. 3: Administrative Increase to the current Contract Term 7/1/17 | $30,600.00 | $102,702.25 |
| Amendment No. 4: Option 2 – Extension 10/11/2017 – 10/10/2018 | $22,320.11 | $125,022.36 |

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: _Faye Mrozek_ 11-16-17        Sign/Date: _____ 11/17/17

Printed Name: _____FAYE MROZEK_____        James T. Howard
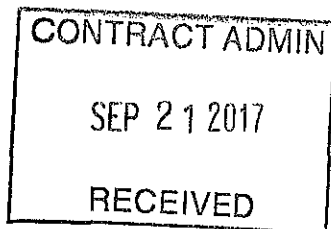Authorized Representative SR. MANAGER, CUSTOMER SUPPORT        Procurement Manager

City of Austin
Purchasing Office

Wolters Kluwer Financial Services Inc.
P.O. Box 842014
Boston, MA 02284-2014

100068713
Austin, TX AL

Amendment No. 3
to
Contract No. NS160000051
For
TeamMate Software and Support
between
Wolters Kluwer Financial Services Inc.
and the
City of Austin

1.0    The City hereby exercises an administrative increase for the above-referenced contract.

2.0    The total contract amount is increased by $30,600.00. The total contract authorization is recapped below:

| Action | Action Amount | Total Contract Amount |
|---|---|---|
| Initial Term:<br>06/15/2016 – 06/14/2017 | $20,245.00 | $20,245.00 |
| Amendment No. 1: Administrative increase to the current Contract Term | $30,600.00 | $50,845.00 |
| Amendment No. 2: Option 1 – Extension<br>06/15/2017 – 06/14/2018 | $21,257.25 | $72,102.25 |
| Amendment No. 3: Administrative Increase | $30,600.00 | $102,702.25 |

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: _____ 9-22-17          Sign/Date: _____
                    FAYE MROZEK
Printed Name: SR. MANAGER, CUSTOMER SUPPORT    James T. Howard
Authorized Representative                       Procurement Manager

                                                City of Austin
Wolters Kluwer Financial Services Inc.          Purchasing Office
P.O. Box 842014
Boston, MA 02284-2014

Amendment No. 2
to
Contract No. NS160000051
For
TeamMate Software and Support
between
Wolters Kluwer Financial Services Inc.
and the
City of Austin

1.0   The City hereby exercises the extension options for the above-referenced contract. Effective June 15, 2017 the term for the extension option will be June 15, 2017 through June 14, 2018 and there are two (2) options remaining.

2.0   The total contract amount is increased by $21,257.25 for the current extension option period.   The total contract authorization is recapped below:

| Action | Action Amount | Total Contract Amount |
|---|---|---|
| Initial Term:<br>06/15/2016 – 06/14/2017 | $20,245.00 | $20,245.00 |
| Amendment No. 1: Administrative increase to the current Contract Term | $30,600.00 | $50,845.00 |
| Amendment No. 2: Option 1 – Extension<br>06/15/2017 – 06/14/2018 | $21,257.25 | $72,102.25 |

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: _____  06/19/17

Printed Name: Ian Rhind, President & CEO
Authorized Representative

Wolters Kluwer Financial Services Inc.
P.O. Box 842014
Boston, MA 02284-2014

Sign/Date: _____ 06/27/17

Paula Barriffe
Buyer I - IT Procurement

City of Austin
Purchasing Office

Amendment No. 1
To
Contract No. NS160000051
for
TeamMate Software and Support
between
Walters Kluwer Financial Services, Inc.
and the
City of Austin


1.0   The City hereby exercises an administrative increase to the above-referenced price agreement in the amount of $30,600.00 per scope of work as listed in the Attachment A. Effective date of this change is September 6, 2016

2.0   The total contract amount is increased by $30,600.00. The total Contract authorization is recapped below:

| Term | Contract Amount for the Term | Total Contract Amount |
|------|------------------------------|------------------------|
| Basic Term:  06/15/2016 – 06/14/2017 | $20,245.00 | $20,245.00 |
| Amendment No. 1: Administrative increase to the current contract Term. | $30,600.00 | $50,845.00 |

3.0   MBE/WBE goals do not apply to 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: _____          Signature: _____

Printed Name:        FAYE MROZEK               Printed Name:  Sai Xoomsai Purcell
              SR. MANAGER CUSTOMER SUPPORT     Senior Buyer Specialist
Wolters Kluwer Financial Services, Inc.        City of Austin

_____9-12-16_____                          _____9|13|16_____
Date                                           Date

# TeamMate Proposal
# For
# TeamCloud

Prepared for
**The City of Austin**

Prepared by
**Chris Egeland, National Account Manager**

TeamMate
Telephone:  (877) 281-4051
Email:  Christopher.Egeland@wolterskluwer.com

Submitted on
**9/1/2016**

## TeamCloud Pricing for City of Austin

The pricing below reflects migration to TeamCloud

**Total cost - $30,600**
- Annual cost for 30 licenses $30,600
- One time setup cost ~~$1,875~~, waived

## TeamCloud Scope of Work

**TeamCloud installation and data migration**

The service includes the initial setup of development, production, and sample databases, installing the suite, and configuring the web and database servers in the hosted solution. It also includes migration of existing TeamMate data for existing TeamMate clients, and providing access of your auditors to the hosted environment.

- Set up the load balanced TeamMate websites
- Restore the existing production database to the cloud environment and upgrade to current software release
- Create the User accounts to provide secure access to TeamCloud
- Configure automated email notification system
- Configure nightly database backup schedule
- Provide instructions for how to connect to TeamCloud

# CONTRACT BETWEEN THE CITY OF AUSTIN
## AND
## Wolters Kluwer Financial Services Inc.
### For
### TeamMate Software and Support

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Wolters Kluwer Financial Services Inc. ("Contractor"), having offices at PO Box 842014, Boston, MA 02284-2014.

## 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 accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3     **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. 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 and task reports.

1.4     **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Joey Richardson, Phone:   (888) 393-3690, Email Address: joey.richardson@wolterskluwer.com. The City's Contract Manager for the engagement shall be Monica Kaspar, Phone:    (512) 974-1633, Email Address: Monica.Kaspar@austintexas.gov. The City 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 as indicated herein upon the successful completion of the Scope of Work, as described herein.  In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not to exceed $20,245.00 for the initial term, $21,257.25 for the first extension, $22,320.11 for the second extension, and $23,436.12 for the third extension, for a total estimated contract amount not to exceed $87,258.48 comprising the software maintenance and support fees.

3.2     **Invoices.**

3.2.1     **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 Contractor'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 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 |

3.2.2    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.

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

3.2.4    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.

## SECTION 4. TERM AND TERMINATION

4.1    **Term of Contract.** The Contract shall be in effect for an initial term of 12 months and may be extended thereafter for up to 3 additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

4.1.1    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).

## SECTION 5. MISCELLANEOUS

7.1    **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: Gil Zilkha, Contract Administrator

P O Box 1088

Austin, TX  78767

To the Contractor:

Wolters Kluwer Financial Services Inc.

ATTN:  Name, Contract Manager

PO Box 842014

Boston, MA 02284-2014

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

Wolters Kluwer Financial Services Inc.

By: _____
Signature

Name: _____ **FAYE MROZEK** _____
Printed Name **SR. MANAGER, CUSTOMER SUPPORT**

Title: _____

Date: _____ 6-14-16 _____

CITY OF AUSTIN

By: _____
Signature

Name: _____ Gil Zilkha _____
Printed Name

Title: _____ Contract Administrator _____

Date: _____ 6/15/16 _____

**List of Exhibits**

Exhibit A        Pricing Agreement
Exhibit B        Terms and Conditions
Exhibit C        Scope of Work
Exhibit D        Support Agreement
Exhibit E        Non Discrimination Certification

## CCH TEAMMATE™ GLOBAL LICENSE,
## SUPPORT AND SERVICES AGREEMENT

This Agreement is made by and between the City of Austin ("Customer" or "City"), a home-rule municipality incorporated by the State of Texas, and CCH Incorporated ("Licensor").

**Section 1.  Selected Definitions**

1.1     "Affiliate" means with respect to Customer, any corporation, partnership, firm, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, governmental organization or body that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Customer, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, organization or body, whether through ownership of voting securities otherwise.

1.2     "Content" means informational content, such as operational risk listings or categories, sample report templates or illustrative databases, contained in the Software or supplied by or on behalf of Licensor to Customer with the Software.

1.3     "Documentation" means any operating manuals, user instructions, technical specifications or similar publications relating to the Use and administration of the Software by Licensor customers that are supplied with or contained in the Software provided to Customer by or on behalf of Licensor.

1.4     "Effective Date" means the date the Agreement is signed by Customer.

1.5     "Initial Fees" mean all license fees payable for license of the Software, together with all fees for any related Services (to the extent such fees are to be paid up front pursuant to the Order) and for the initial Support term, in each case as shown on the applicable Software Order.

1.6     "Intellectual Property Rights" means all rights, title and interests in and to the Licensed Products, including, without limitation, all copyright, patent, trade secret, trademark and other intellectual property and proprietary and moral rights related thereto, and these and any other similar rights in any jurisdiction relating to the Licensed Product.

1.7     "Licensed Products" mean the Software, any Content (whether included in the Software or separately provided), the Documentation and the Media.

1.8     "Licensor" means CCH Incorporated or any non-United States affiliated company that is named as the "licensor" or "services provider" in this Agreement.

1.9     "Media" means the physical media on which the Software and Documentation are recorded or printed, as provided by Licensor to Customer.

1.10     "Order" means the Department Order that will be issued by Customer pursuant to this Agreement.

1.11     "Services" means the services (other than Support) provided by Licensor under this Agreement, as requested by Customer, accepted by Licensor and described in one or more Scope(s) of Work, attached hereto.

1.12     "Software" means (a) the CCH TeamMate™ electronic audit management software suite only in machine readable, executable (object code) format, including the features, functions, designs and any Content included therein, (b) any Updates or Versions that may be provided by or on behalf of Licensor to Customer during the applicable Support Period, and (c) any complete or partial copies thereof permitted to be made by this Agreement.

1.13     "Support" means Licensor's then current support and maintenance services program for the Software, as further described in Section 8.

1.14     "Support Period" means the period during which Licensor provides support services under the terms of this Agreement and as set out in the Order, for which Customer has paid the applicable fee(s).

1.15     "Update" means any updates, enhancements, improvements, corrections, service packs or other modifications of or to the Software that are released by Licensor for general distribution to CCH TeamMate™ licensees as a part of Support during the period for which Customer has purchased Support, but which are not new major Versions.  An Update is

generally denoted by Licensor by a change to the right of the first decimal point in the Software version number (for example, Version 1.0 to 1.1).

1.16 "Use" or "Using" means (a) to install, load, download, execute, access, utilize, display or store the Software or information therein, or interact with its functionality or processing capabilities in accordance with the terms of this Agreement, and (b) to read, process and utilize the Documentation and process the Media in connection with Use of the Software in accordance with the terms of this Agreement.

1.17 "User" means each individual employee of Customer or its authorized agents or subcontractors who Uses the Licensed Products as operated or made available by or through Customer, regardless of whether such individual is actively Using the Software at any given time.

1.18 "Version" means any new version or upgrade of the Software that contains substantial and significant enhancements, or other substantial changes in functionality or performance as compared to the previous version (if any) and which is designated by a numeric change to left of the decimal (e.g., Version 8.0 and 9.0).

## Section 2. License Grant

2.1 General. Effective upon Customer's payment of the Initial Fees, Licensor hereby grants to Customer a non-exclusive, perpetual and non-transferable license to Use the Licensed Products, on and subject to the terms and conditions of this Agreement. Licensor reserves all rights in and to the Licensed Products not expressly granted in this Agreement.

2.2 Internal Use Limitation. Customer may Use and permit its Users to Use the Licensed Products only for Customer's own internal business purposes. Other than Users authorized hereunder, Customer shall not permit any third party to Use the Licensed Products in any way whatsoever. Except as expressly authorized by Section 3 of this Agreement, Customer shall not, and shall not permit any User to, offer or Use the Licensed Products for the benefit of any affiliated or unaffiliated third parties, including in any computer service business, service bureau arrangement, outsourcing or subscription service, time sharing or other participation arrangement.

2.3 Number of Users. Customer shall not Use, or permit the Use of, any Licensed Products by more than the maximum number of Users specified in the applicable Order (as the same may be adjusted pursuant to an Order amendment or supplement or Section 4.5 hereof), whether or not such Users are actively Using the Licensed Products at the same time.

2.4 Copies. Customer may make a reasonable number of back-up copies of the Software for Customer's archival or disaster recovery purposes only and not for production, development, evaluation or testing purposes (other than to ensure that such back-up copies are capable of replacing the Software in case of a disaster). Such copies shall be the property of Licensor and Customer shall not remove from, deface or overprint on the original Software any Licensor copyright notices, trademarks, logos, legends or other similar proprietary designations, and shall accurately reproduce all of the same on any permitted copies. Customer shall keep exclusive possession of and control over the copies of the Licensed Product in its possession and shall effect and maintain adequate security measures to safeguard the Licensed Product from access or Use by any unauthorized person or person who is not an authorized User hereunder.

2.5 Evaluation License. If any Licensed Products are provided to Customer for evaluation or trial Use, Customer may Use the same only for the purposes of evaluating the Software during the trial period specified in an Order or, if no period is specified, for a period of thirty (30) days from receipt of the Evaluation License. All Licensed Products are provided to Customer for evaluation purposes during any such trial period on an "AS IS" basis, with no warranties or indemnities whatsoever, express or implied, orally or in writing. The preceding will supersede and apply in lieu of Sections 10 and 11, other than Section 10.5.

## Section 3. Limited Third Party Use of Licensed Products

3.1 Affiliate Use. Any Customer Affiliate may Use the Licensed Products, provided that (a) such Customer Affiliate Uses the Licensed Products only for its own and/or Customer's internal business purposes strictly in accordance with all of the terms and conditions set forth in this Agreement (including, without limitation, Section 2.3 above), and (b) Customer Affiliate agrees to comply with and be bound by the terms of this Agreement. Customer hereby agrees to be fully responsible and liable for each and every Customer Affiliates' (and its Users) full compliance with the terms and conditions of this Agreement, such that any breach of the terms of this Agreement by any such Affiliate (or its Users) shall be deemed a breach by Customer.

3.2 Use by Third Party Service Providers. Customer may permit Use of the Licensed Products by its third party service providers or consultants, including any third parties providing Customer with outsourcing, data center management or disaster recovery services ("Service Providers"), provided that such Service Providers (a) Use the Licensed Products only for Customer's internal business purposes and (b) agree to comply with and be bound by the terms of this Agreement. Customer hereby agrees to be fully responsible and liable for each and every Service Providers' (and its Users) full compliance with the

2

terms and conditions of this Agreement, such that any breach of the terms of this Agreement by any such Services Provider (or its Users) shall be deemed a breach by the Customer.

3.3 <u>User Count and License Fee Adjustments</u>. Any individuals afforded rights to Use the Licensed Products pursuant to <u>Sections 3.1</u> or <u>3.2</u> shall be counted as Users for all purposes under this Agreement. Customer shall advise Licensor promptly upon any increase in the total number of Users as a result of any such Subsidiary or Service Provider Use and shall pay to Licensor any required additional License fees at Licensor's then current applicable rates. No such adjustments shall be required for any incidental access to information in, from or generated by the Software required or requested by any external financial auditor of Customer or any subsidiary, or any representative of any governmental, accreditation or regulatory body in the course of their normal regulatory, investigative or professional duties for or with respect to Customer or any subsidiary.

## Section 4. Unauthorized Use of Licensed Products

4.1 <u>No Modification or Reverse Engineering</u>. Customer shall not, and shall not allow any User, Affiliate or Service Provider to, (a) modify, port, adapt or translate or create any derivative works from or based on the Licensed Products, in whole or in part, (b) reverse engineer, decompile, disassemble or otherwise attempt to reduce the object code to or discover the source code of the Software, or (c) combine or merge the Software with, or incorporate it into, any other software. This prohibition shall not apply to the extent that applicable law affords Customer the right to decompile the Software if and as necessary to render it interoperable with other software licensed or used by Customer, provided that Customer first requests such interoperability information from Licensor and complies with any reasonable conditions, including payment of any reasonable fees and expenses then generally charged by Licensor to its customers for the same. Customer's Use of the Software to process Customer information or tasks and produce activity lists, schedules or reports which the Software enables and for which it is intended will not be deemed to constitute creation of derivative works or violations of this Section 4.1.

4.2 <u>No Transfer or Assignment</u>. Except as may be otherwise expressly provided in <u>Section 3</u>, Customer shall not (a) sublicense, assign or transfer the Software in whole or in part to any third party, or (b) assign or transfer to any third party any of Customer's rights or interests in and to the Software, including through any lease, rental, subscription, lending, pledge, security interest or shared participation arrangement with or in favor of any third party.

4.3 <u>Additional Customer Responsibilities</u>. Customer shall maintain, and promptly provide to Licensor upon its request, accurate User lists and other reasonably detailed records regarding Use of the Software by or for Customer. If Customer becomes aware of any unauthorized Use of all or any part of the Licensed Products, Customer shall notify Licensor promptly, providing reasonable details. Customer will remain responsible for any unauthorized Use of the Licensed Products by any individuals employed by, acting as authorized agents of or performing services for Customer or it Affiliates (including any of their respective service providers).

4.4 <u>Verification Rights</u>. Upon reasonable prior notice to Customer not more than once every twelve (12) months, Licensor may conduct an audit, using its own or third party personnel, to review that Customer's Use of the Licensed Products complies with this Agreement, including the number of licensed Users under this Agreement and the applicable Order(s). Licensor will conduct any such audit during Customer's normal business hours and in accordance with Customer's reasonable site security requirements. If any such audit or any other Customer-provided information reveals that Customer has underpaid any license or Support fees, then as a non-exclusive remedy, Licensor may invoice Customer for, and Customer will pay, such additional fees as are thereby determined to be payable, based on Licensor's then effective list prices. If such underpayment exceeds five percent (5%) of the total fees paid *or due and payable* by Customer under this Agreement, Customer also shall reimburse Licensor for its reasonable costs actually incurred in conducting the verification.

4.5 Licensor agrees that, no more than once every twelve (12) months and upon sixty (60) days advance written notice to Licensor, the representatives of the Office of the City of Austin Auditor or other authorized representatives of the Customer shall have the right to audit those records of Licensor directly related to the amounts invoiced to Customer under this Agreement. Licensor shall retain all such records for a period of three (3) years after final payment on this Agreement or until all audit and litigation matters involving the Customer are resolved, whichever is longer. Licensor agrees to refund to Customer any overpayments disclosed by any such audit. All such audits shall be at the expense of Customer, shall not unreasonably interfere with Licensor's business operations and shall be subject to the Customer's confidentiality obligations under this Agreement.

## Section 5. Proprietary Rights

5.1 <u>Ownership of Licensed Products</u>. Customer acknowledges that Licensor is and will remain the sole and exclusive owner of all Intellectual Property Rights. Customer shall have no rights, title or interest therein or thereto, other than the limited license expressly set forth in this Agreement.

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5.2. Ownership of Customer Data. Nothing in this Agreement shall be construed as granting Licensor any right, title or interest in or to any Customer-provided data or other content or information input into or processed using the Licensed Products.

5.3 Ownership of Other Materials. Licensor shall be the exclusive owner of all rights, title and interests, including all Intellectual Property Rights, in and to (i) the Licensed Products, (ii) any and all translations, adaptations, developments, enhancements, improvements, Updates, Versions, customizations or other modifications or derivations of or to the Licensed Products, whether or not developed by or for the Customer, and (iii) any suggestions, ideas, enhancement requests, feedback, or recommendations provided by or on behalf of Customer. In providing any customized report template or other customized work product deliverables in connection with its provision of Services hereunder, Licensor does not and shall not be deemed to transfer to Customer any Intellectual Property Rights therein, whether as "work-for-hire" or otherwise, other than the right to Use the same in accordance with this Agreement as part of the Licensed Products. Customer hereby assigns, grants and conveys to Licensor all rights, title and interests in and to any and all such materials, effective upon their creation or communication. Customer will execute and deliver to Licensor such further assignments and take all such further actions as Licensor may reasonably request to effect or evidence the assignment to and vesting in Licensor of all such rights.

5.4 No Contest. Neither Party shall pursue any claims contesting, make any filings or registrations inconsistent with or otherwise take any actions to challenge the respective Intellectual Property Rights of the other Party as set forth in this Section 5.

**Section 6. Confidential Information**

6.1 Nature and Scope. Customer's (i) financial and audit working papers and related documentation, and (ii) all data and other information identified as confidential by Customer, are confidential information of Customer. Customer agrees that the Licensed Products constitute trade secrets and confidential information of Licensor. Customer and Licensor confidential information, in all forms and media and including all notes, excerpts and derivatives and all copies of any of the foregoing, are hereafter collectively referred to as "Confidential Information."

6.2 Obligations. Each party will keep all Confidential Information of the other Party strictly confidential. Each party agrees to use the same care to protect the Confidential Information of the other as it employs with similar information of its own (but in no event less than reasonable care). Neither party will disclose any Confidential Information of the other party, except that each party may disclose Confidential Information of the other to its employees, subcontractors or agents who have a need to know such information, provided that, prior to such disclosure, the disclosing party requires that each such employee, subcontractor or agent agree to the restrictions on use and disclosure of Confidential Information set forth in this Agreement. The parties further agree that they will use Confidential Information solely for the purposes for which such information, or access to it, is provided pursuant to the terms of this Agreement. Upon any termination of this Agreement or otherwise promptly after the disclosing party's reasonable request, the receiving party shall either return to the disclosing party or destroy and certify in writing to such party the destruction of any and all Confidential Information of such party in the receiving party's possession. For the purpose of this Section 6, with respect to Customer, "party" shall include any Affiliate of Customer who has Users hereunder. In addition, Customer and its Affiliates (if applicable) shall be responsible for full compliance of any of their Service Providers' or Users' full compliance with the confidentiality obligations hereunder. These confidentiality obligations shall survive for a period of five (5) years after Customer's termination of Support of the Software.

6.3 Exceptions. Confidential Information shall not include information which is: (i) independently developed by the party without the benefit of the other's disclosure or is already known by the party at the time of disclosure; (ii) approved for release by the other's written authorization or is rightfully received by the party from a third party without any obligation of confidentiality; (iii) public knowledge without the wrongful act or breach of this Agreement by either party; or (iv) disclosed pursuant to the requirements of a governmental agency or court order.

**Section 7. Order, Delivery and Payment**

7.1 Order, Delivery, Installation. Customer may order Software licenses, Support and/or Services by submitting one or more signed Orders to Licensor. After its acceptance of a Software Order, Licensor will either deliver the Software to Customer at the locations provided therein or permit the Customer to download the Software from an FTP site identified in such Order. Customer will be responsible for installation of the Software, except to the extent Licensor agrees to provide such Services in accordance with Section 9 and pursuant to an Order. Licensor will bear all risk of loss for Licensed Products until their delivery to or downloading by Customer.

7.2 Payment and Taxes. All fees and expenses are quoted and invoiced in the currency specified in the applicable Order. All invoiced amounts are due and payable by Customer within thirty (30) days after the invoice date. Fees and other charges described in the applicable Order, do not include federal, state or local sales, foreign withholding, use, property, excise, service, value added or similar taxes ("Tax(es)") now or hereafter levied, all of which shall be for Customer's account. With respect to state/local sales tax, direct pay permits or a valid tax-exempt certificates must be provided to Licensor prior to the execution of this Agreement. If Licensor is required to pay Taxes, Customer shall reimburse CCH for all such amounts.

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Customer hereby agrees to indemnify Licensor for any such Taxes and related costs, interest and penalties paid or payable by Licensor. Customer is a governmental tax-exempt entity and will provide a valid tax-exempt certificate.

~~7.3 Fees and Payment Terms.~~

~~7.3.1 License Fees. The Initial License Fees are $79,000 and shall be payable as follows: (i) fifty percent (50%) on receipt of the software by Customer and (ii) fifty percent (50%) on Final Acceptance (as set forth in Section 9.6 below). The License Fees for additional Users set forth on Exhibit B hereto shall remain firm through December 31, 2010 such that any Users added by Customer from the Effective Date through December 31, 2010 shall be invoiced at such rates. Any additional Users added by Customer subsequent to December 31, 2010 shall be subject to the then-current License Fees, provided that License Fees shall not increase by more than five percent (5%) from the License Fees applicable to the immediately preceding twelve (12) month period.~~

~~7.3.2 Support Fees. The Support Fees for the first year are included in the License Fees. The second year of Support Fees are waived by Licensor. The Support Fees for each subsequent twelve (12) month Support Period for which Customer elects to purchase Support shall be twenty percent (20%) of the then-current License Fees. Support Fees shall be payable annually in advance.~~

~~7.3.3 Service Fees. The Service Fees for the remote installation, implementation and training set forth on Exhibit B are a not to exceed amount of $13,875 and are payable as follows:~~

~~50% upon delivery of software to the City~~
~~50% upon Final Acceptance (as set forth in Section 9.6 below)~~

~~• Implementation and training rates will remain at $3,000 per day for the first two (2) years of the term of the Contract~~

~~• Travel will be paid as incurred, not to exceed $3,500 maximum for four (4) onsite days~~

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

7.5 **Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Agreement for which reimbursement may be claimed by Licensor under the terms of the Agreement will be reviewed against Customer's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentId=17943&contentType=GSA_BASIC

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

7.6 **Final Payment and Close-Out.**

7.6.1 The making and acceptance of final payment will constitute:

7.6.1.1 a waiver of all claims by Customer against Licensor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from failure of Licensor to comply with the Agreement or the terms of any warranty specified herein, (3) arising from Licensor's continuing obligations under the Agreement, including but not limited to indemnity and warranty obligations, or (4) arising under Customer's right to audit; and

7.6.1.2 a waiver of all claims by Licensor against Customer other than those (1) previously asserted in writing and not yet settled, (2) arising from failure of Customer to comply with this Agreement, (3) arising from

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Customer's continuing obligations under this Agreement, including but not limited to confidentiality obligations, or (4) arising under Licensor's right to audit.

## Section 8. Support

8.1 **Support Term and Fees.** Unless otherwise provided in the Order, Support will be provided to Customer at no additional charge during the initial twenty-four (24) month term following receipt of the Software by the City. Thereafter, Licensor will send Customer, at least sixty (60) days prior to the expiration of each annual Support term, an invoice for the fees required to renew Support for an additional year. Customer may thereafter, at its sole option, renew Support for an additional year by paying such invoice within thirty (30) days of receipt thereof or provide Licensor with written notification of Customer's decision not to renew Support within such thirty (30) day period. For clarity, Customer shall have no obligation to renew Support. Support fees for each successive Support renewal term are payable by Customer annually in advance. At the request of Licensor, Customer will provide Licensor with an update and/or confirmation of the number of Users of the Software and to the extent such number of Users has increased, Customer will pay Licensor such increased license fees and Support as required hereunder.

8.2 **Licensor Support Obligations.** Throughout the applicable Support Period, provided that Customer is not then in default of its obligations under this Agreement (including payment obligations) and subject to the exclusions set forth in Section 8.4, Licensor will provide or cause to be provided the following Support services: (a) telephone help-desk, and electronic and/or remote access support to assist Customer in its Use of the Software and respond to any reported failures of the Software to conform to Section 10.2 (provided that this support shall not be in lieu of obtaining training with respect to the Licensed Product, for which there is a Service charge); (b) provision of such Updates and Versions as Licensor from time to time produces and distributes generally to Software licensees under Support for no additional fees; and (c) such other support services as Licensor provides generally to licensees as part of its then current Software support and maintenance program.

8.3 **Customer Responsibilities.** Throughout the applicable Support Period, Customer will: (a) at its expense, maintain an approved, secure internet connection and such other compatible devices as needed to enable Licensor to gain remote access, with Customer's consent, to the computer system(s) on which the Software is installed for diagnostic, error notation and correction and other support purposes; (b) cooperate with Licensor in investigating and seeking to identify the cause of any claimed failure of the Software to perform in accordance with this Agreement; (c) allow such other remote and/or on-site access to the Software and to Customer's systems as may be reasonably required for Licensor to perform Support activities and (d) install all Updates and/or Version of the Software within at least eighteen months of their release by Licensor. Licensor's obligation to provide the Support described in Section 8.2 above shall not apply to the extent Customer is not in full compliance with this Section 8.3(d). Customer acknowledges that the failure to timely install any Updates and/or Versions shall excuse Licensor's warranty and indemnity obligations herein, if and to the extent any performance or infringement issues thereby would have been avoided or mitigated by Customer's installation of such Updates and/or Versions.

8.4 **Exclusions.** Licensor Support will not include: (a) resolution of problems resulting from: (i) any modification of or damage to the Software or its operating environment, (ii) Customer's failure to operate the Software in an approved hardware and software environment or otherwise in accordance with applicable Licensor Documentation, or (iii) Customer's failure to implement any Updates provided by Licensor within the period of time required in Section 8.3(d); (b) new Versions of the Software for which Licensor establishes and generally charges Software licensees a separate license fee; (c) the provision of any Updates or other program Support described in Section 8.2, if Customer is in default with respect to payment of Support fees; or (d) Services, including but not limited to any installation, implementation and other Services.

8.5 **Support Termination.** Either party may terminate Support under this Agreement as of the end of the initial Support Period, or as of the end of any renewal term, by written notice to the other party at least one hundred twenty (120) days prior to the end of such applicable Support Period and/or renewal term. If Customer's license to use any of the Software is terminated for any reason, Support will terminate automatically as to such Software. If Licensor terminates Support in accordance with this Section 8.5, other then in the circumstance of a breach of this Agreement by Customer, Customer will be entitled to receive a pro-rata refund of any prepaid Support fees for any period beyond the termination effective date.

## Section 9. Services

9.1 **General.** Licensor offers consulting services relating to the Licensed Products, including installation and implementation services, configuration or customization of templates or reports and training for Customer personnel. Licensor will provide (a) any required initial implementation Services, as provided in the Order for the Licensed Products, and (b) all other Services, at Customer's election and following Customer's signature and Licensor's acceptance of an Order describing the nature, scope, project assumptions, fees, duration, location(s) of the covered Services, in each case in accordance with and subject to the terms and conditions of this Agreement. The initial order for Services is in the Scope of Work attached hereto as Exhibit A.

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9.2 Services Performance; Customer Support. Customer agrees to provide the information, facilities, personnel and equipment, including if applicable suitably configured computers, reasonably identified by Licensor as essential to the performance of any Services. Customer may require Licensor's personnel in performing any Services to observe at all times the safety and security policies of Customer. Customer shall advise Licensor of any hazards to the health and safety of Licensor's personnel on the Customer's premises and provide Licensor's personnel with appropriate information regarding applicable safety and security procedures.

### 9.3 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.

9.3.1 All Customer procurements are subject to Customer's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the Austin City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all Customer contracts.

Licensor agrees that it shall not use any subcontractors in connection with performing its obligations under this Agreement and accordingly Customer has determined that no goals are appropriate for this Agreement.

9.5 Living Wages and Benefits.

9.5.1 In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for Customer employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for Customer employees is $11.00 per hour. This minimum wage is required for any Licensor employee providing Services to Customer under this Agreement, unless Published Wage Rates are included in this solicitation. In addition, Customer may stipulate higher wage rates in certain contracts in order to assure quality and continuity of service.

9.5.2 Additionally, Customer provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Licensor must offer health insurance with optional family coverage for all Licensor employees providing Services to Customer under this Agreement. Proof of the health care plan shall be provided prior to award of a contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if requested by Customer.

9.5.3 Customer requires Licensor to provide a signed certification within five (5) calendar days of Customer's request certifying that all employees providing Services to Customer under this Agreement will be paid a minimum living wage equal to or greater than $11.00 per hour and are offered a health care plan (see Exhibit D, Living Wages and Benefits Contractor Certification). The certification shall include a list of all such employees, including their name and job title. The list shall be updated and provided to the Customer as necessary throughout the term of the Agreement.

9.6 Final Acceptance. Acceptance testing is an iterative process designed to determine whether the Software performs the function(s) described in its approved specification and Customer's requirements, and to discover and remove non-conformities through repeated testing cycles. As used in this Agreement, "nonconformity" means a reproducible condition in the Software that prevents the Software from performing the functions described in its specifications and the requirements such that the Software does not operate or can not be used in a production environment. Final Acceptance will be deemed to occur upon the latter of: a) thirty (30) days from completion of the Services set forth on Exhibit B hereto or b) December 1, 2016 (provided however that Customer does not unduly postpone the performance of the Services), unless Customer has provided Licensor with written notification of any nonconformities during such time. In the event of such notice, Licensor shall have five (5) business days to correct such non-conformity and Final Acceptance will occur upon Customer's receipt of the corrected Software.

9.7 Services Pricing. Unless otherwise provided in the applicable Order, all Services other than Support shall be provided on a not-to-exceed basis at Licensor's then current rates. Customer shall pay or reimburse Licensor for all reasonable travel and other out-of-pocket expenses incurred in connection with Licensor's performance of Services hereunder so long as they follow Customer's travel guidelines set forth in Section 7.6 of the Agreement.

**Section 10. Limited Warranties and Disclaimers**

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10.1 Authority. Each party represents to the other that such party has the full corporate power and authority to enter into and perform this Agreement.

10.2 Software and Media. The Licensor warrants and represents that during the Warranty Period all Deliverables purchased, licensed, or sublicensed to Customer under the Agreement shall be free from material defects in design, workmanship or manufacture, will function substantially in accord with their documentation, and conform in all material respects to the terms, covenants and conditions of the Agreement. The Licensor 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.

Unless otherwise specified in the Agreement, the warranty period shall be not less than one hundred twenty (120) days from Final Acceptance. If during the Warranty Period, one or more of the above warranties in this Section are breached, the Licensor shall promptly upon receipt of demand either use commercially reasonable efforts to correct the non-conforming Deliverables, or replace the non-conforming Deliverables with materially conforming Deliverables, at Customer's option and at no additional cost to the Customer. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Licensor. Customer shall endeavor to give the Licensor written notice of the breach of warranty within thirty (30) days of discovery of the breach of warranty, but failure to give timely notice shall not impair Customer's rights under this section. If Customer elects to allow Licensor to correct the non-conforming Deliverable and notifies Licensor before the expiry of the Warranty Period that the Software does not function substantially as warranted, Licensor shall use commercially reasonable efforts to rectify each such non-conformity within the Warranty Period. If any such non-conformity, which has been reasonably verified or replicated by Licensor, has not been rectified by Licensor within the Warranty Period, the Warranty Period shall be extended until such non-conformity is rectified but in no case more than thirty (30) days from notice date. If during the Warranty Period, a non-conformity remains uncorrected for more than thirty (30) days from the time Licensor is informed of the non-conformity, then Customer may (at its sole discretion and as its sole and exclusive remedy): (i) reduce the quantity of Deliverables it may be required to purchase under the Agreement from the Licensor, and obtain an immediate refund of money paid by the Customer for the non-conforming Deliverables. In addition, and notwithstanding the above, this paragraph shall not apply to any requirements on Licensor under this Agreement to provide either insurance or indemnification and shall not limit the operation of or remedies provided by those sections of the Agreement.

Licensor warrants that it will perform a standard virus check for known viruses prior to shipping the Software to City. Additionally, Licensor warrants that, to its knowledge, it has not inserted any time bomb or other similar disabling device into the Software.

Licensor warrants and represents that it has taken reasonable steps in accordance with its standard procedures to test the Licensed Products for which a license is granted hereunder for spy ware and malware code and for code that collects and/or distributes information without Customer's or the actual user's consent (hereafter referred to as "Invasive Code") and that Licensor will continue to take such reasonable steps with respect to future enhancements or modifications to the Licensed Products.

10.3 Services. Licensor warrants to Customer that all Services provided under this Agreement will be performed by competent personnel with appropriate experience in providing such Services.

10.4 Warranty Limitations. The preceding Licensor warranties do not apply to and, to the full extent permitted by law, Licensor shall have no responsibility for breaches of warranty to the extent arising from: (i) Customer operator errors; (ii) Customer hardware or operating system failures; (iii) the modification of the Software by any person other than Licensor (except as directed or authorized by Licensor); (iv) the combination of the Software with products or services not provided by Licensor (except as directed or authorized by Licensor); (v) Use of any portion of the Software in a manner not permitted or contemplated by this Agreement or the Documentation; (vi) Use of an earlier Version of some or all of the Software other than the current Version or Use of Software without all Updates installed.

10.5 **DISCLAIMERS** (a) EXCEPT FOR (i) THE WARRANTIES EXPRESSLY STATED ABOVE IN THIS SECTION 10 AND (ii) ANY WARRANTY, REPRESENTATION OR CONDITION TO THE EXTENT THE SAME CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW, LICENSOR AND ITS AFFILIATES, AGENTS, SUBCONTRACTORS AND SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES, AND EXPRESSLY DISCLAIM AND EXCLUDE ANY AND ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY OR UNDER STATUTE, COMMMON LAW, CUSTOM, USAGE, COURSE OF PERFORMANCE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, LICENSOR AND ITS AFFILIATES, AGENTS, SUBCONTRACTORS AND SUPPLIERS DO NOT WARRANT, AND EXPRESSLY DISCLAIM ANY REPRESENTATION OR WARRANTY, THAT THE LICENSED PRODUCTS, CONTENT, SUPPORT, SERVICES OR OTHER DELIVERABLES PROVIDED BY OR ON BEHALF OF LICENSOR WILL SATISFY CUSTOMER'S REQUIREMENTS OR THAT THEIR USE OR OPERATION WILL BE ERROR OR DEFECT FREE OR UNINTERRUPTED, OR THAT ALL SOFTWARE DEFECTS WILL BE CORRECTED. EXCEPT FOR THE EXPRESS WARRANTIES IN SECTION 10, (A) THE LICENSED PRODUCTS ARE PROVIDED "AS IS," WITH

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ALL FAULTS AND WITHOUT ANY GUARANTEES REGARDING QUALITY, PERFORMANCE, SUITABILITY, TIMELINESS, SECURITY, DURABILITY, INTEGRABILITY OR ACCURACY, AND (B) CUSTOMER ACCEPTS THE ENTIRE RISK OF AND RESPONSIBILITY FOR USE, QUALITY, PERFORMANCE, SUITABILITY AND RESULTS OF USE OF THE LICENSED PRODUCTS AND ITS OWN AUDIT APPROACH OR METHODOLOGY.

(b) NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR, ANY OF ITS AFFILIATES, DISTRIBUTORS, AGENTS, SUBCONTRACTORS OR SUPPLIERS OR THEIR RESPECTIVE EMPLOYEES, OFFICERS OR DIRECTORS WILL INCREASE THE SCOPE OR OTHERWISE ALTER THE TERMS OF ANY WARRANTY EXPRESSLY STATED IN THIS AGREEMENT OR CREATE ANY NEW REPRESENTATIONS, WARRANTIES OR CONDITIONS.

(c) TO THE EXTENT THAT ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS CANNOT BE FULLY DISCLAIMED AND EXCLUDED UNDER APPLICABLE LAW AS CONTEMPLATED BY SECTION 10.5(a), THEN ANY DIFFERENT OR ADDITONAL LEGALLY REQUIRED WARRANTIES, REPRESENTATIONS OR CONDITIONS, SHALL BE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF SOFTWARE DELIVERY OR SERVICES PERFORMANCE, AS APPLICABLE.

### Section 11. Indemnities

11.1 Infringement Indemnity. (a) General. Licensor agrees (i) to defend Customer against or, at Licensor's option (subject to Section 11.3), settle any unaffiliated third party claim or action brought against Customer asserting that Customer's Use of all or part of the Licensed Products in conformity with this Agreement infringes such third party's copyrights or registered trademarks in the United States, Canada, Australia or the European Union or a third party's patents in the United States, and (ii) to indemnify Customer against actual damages and reasonable costs and expenses assessed against or recovered from Customer as a result of any such claim or action.

(b) Exclusions. Section 11.1(a) does not cover claims or actions based upon or arising out of: (i) Use of the Licensed Products in combination with other non-Licensor-provided products or programs with which the Licensed Products are not authorized or intended to be used; (ii) modification or alteration of the Software by Customer or for Customer by any person other than Licensor or its authorized agent; (iii) Use of the Licensed Products in breach of this Agreement or in a manner not consistent with or contemplated by the Documentation; or (iv) use of a superseded or altered Version of some or all of the Software if infringement would have been avoided or mitigated by the use of a subsequent unaltered Version (with all Updates) of the Software that is provided to Customer as part of Support.

or at the direction of anyone

(c) Licensor Cure. If all or part of the Licensed Products become, or in Licensor's opinion, are likely to become, the subject of a third party claim of infringement or violation of Intellectual Property Rights, Licensor may, at its option: (i) procure for Customer the right to continue using the affected Licensed Products; (ii) replace the same with substantially equivalent, non-infringing materials; or (iii) modify the affected Licensed Products so that they become non-infringing without materially changing their functionality. If, in Licensor's opinion, none of the foregoing alternatives are feasible or commercially reasonable, Licensor may terminate Customer's license to the affected Licensed Products, require and accept return of the same, and refund to Customer the unamortized portion of the allocable Software license fees paid by Customer with respect thereto (based on a five-year estimated useful life) and the unused portion of any Customer prepaid, related Support fees.

(d) Exclusive Remedy. To the maximum extent permitted by applicable law, the provisions of this Section 11.1 state the sole, exclusive and entire liability of Licensor and its affiliates, distributors, agents, subcontractors and suppliers, and Customer's sole remedy, with respect to any actual or claimed infringement or other violation of any third party's Intellectual Property Rights.

11.2 General Indemnity. Licensor agrees to indemnify Customer against any liabilities for bodily injury (including death) or tangible property damage to the extent they are caused by the gross negligence or willful misconduct of Licensor or its affiliates, distributors, agents, subcontractors or suppliers, or their respective officers or employees, in providing Support or performing Services for Customer. To the maximum extent permitted by applicable law, the foregoing indemnity shall be subject to the limitations contained in this Agreement, including those in Section 12.

11.3 Indemnification Procedures. The indemnity in this Section 11 is contingent upon: (i) Customer promptly notifying the Licensor in writing of any claim which may give rise to a claim for indemnification; (ii) Licensor being allowed to control the defense and settlement of such claim; and (iii) Customer cooperating with all reasonable requests of Licensor (at Licensor's expense) in defending or settling a claim. Customer shall have the right, at its option and expense, to participate in the defense of any suit or proceeding through a counsel of its own choosing. Licensor may settle any such claim, provided that no settlement of any claim admitting liability of, or imposing duties or restrictions upon, Customer, other than for payment of monetary amounts for which Licensor agrees to be responsible or for termination of Customer's Use of the Software in accordance with Section 11.1, may be effected without the prior written consent of the Customer, which shall not be unreasonably withheld or delayed.

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**Section 12. Limitations of Liability**

12.1 Internet Exclusion. THE SOFTWARE MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. CUSTOMER ACKNOWLEDGES AND AGREES THAT LICENSOR AND ITS AFFILIATES, AGENTS, SUBCONTRACTORS AND SUPPLIERS DO NOT OPERATE OR CONTROL THE INTERNET AND THAT (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE, OR (II) UNAUTHORIZED USERS (E.G. HACKERS), MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE CUSTOMER'S DATA, WEBSITES, COMPUTERS OR NETWORKS. LICENSOR SHALL NOT BE RESPONSIBLE FOR PREVENTION OR EFFECTS OF SUCH ACTIVITIES.

12.2 Customer Responsibility; Professional Advice. CUSTOMER ASSUMES ALL RESPONSBILITIES AND RISKS, FOR ITSELF AND ALL USERS, REGARDING: (I) ALL DATA AND INFORMATION COLLECTED, USED OR INCLUDED IN OR PROCESSED, ACCESSED OR STORED WITH THE LICENSED PRODUCTS; (II) THE PREPARATION, ACCURACY, REVIEW AND USE OF RESULTS OBTAINED THROUGH USE OF THE SOFTWARE OR ANY CONTENT, AND ANY DECISIONS OR ADVICE MADE OR GIVEN TO ANY PARTY BASED ON THE USAGE OF THE LICENSED PRODUCT. LICENSOR AND ITS AFFILIATES, DISTRIBUTORS, AGENTS, SUBCONTRACTORS AND SUPPLIERS ARE NOT ENGAGED IN RENDERING AUDITING, ACCOUNTING, LEGAL OR OTHER PROFESSIONAL OR EXPERT ADVICE OR SERVICES AND ARE NOT RESPONSIBLE FOR HOW THE LICENSED PRODUCT IS USED, THE RESULTS AND ANALYSIS DERIVED BY CUSTOMER BY USE OF THE LICENSED PRODUCT AND ANY DECISIONS THE CUSTOMER MAY TAKE BASED ON CUSTOMER'S USAGE OF THE LICENSED PRODUCT.

12.3 Damages Exclusion. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER LICENSOR OR CUSTOMER, NOR THEIR RESPECTIVE AFFILIATES, DISTRIBUTORS, AGENTS, SUBCONTRACTORS OR SUPPLIERS, WILL HAVE ANY LIABILITY WHATSOEVER FOR ANY LOSS OF SALES, PROFITS, BUSINESS, DATA, OR OTHER INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR ANY EXEMPLARY, PUNITIVE OR SPECIAL LOSS OR DAMAGE, EVEN IF ADVISED OF THE POSSIBILITY OF THEIR OCCURRENCE, RESULTING FROM OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE LICENSED PRODUCTS, CONTENT, SUPPORT OR ANY SERVICES RENDERED HEREUNDER, OR ANY OTHER CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE CLAIM OR ACTION (WHETHER BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, STATUTE OR OTHERWISE), PROVIDED, HOWEVER, THERE SHALL BE NO LIMITATION OF LIABILITY FOR CUSTOMER'S BREACH OF ANY PROVISIONS OF THIS AGREEMENT RELATING TO PROPRIETARY RIGHTS, CONFIDENTIALITY AND NON-DISCLOSURE AND NON-USE OF CONFIDENTIAL INFORMATION.

12.4 Limitations of Liability. Except for any indemnification liability arising under Section 11.1 or 11.2 of this Agreement, the entire and collective liability of Licensor and its affiliates, distributors, agents, subcontractors and suppliers, arising out of or related to this Agreement, the Licensed Products, Content, Support or Services, or any other cause whatsoever, including without limitation on account of performance or nonperformance of obligations under this Agreement, regardless of the form of the cause of action, whether in contract, tort (including without limitation negligence), statute or otherwise, shall in no event exceed two times the total fees paid to Licensor in the twelve-month period preceding the date such claim or cause of action first arose. The limitation of liability under this Section will be applied to the maximum extent permitted by applicable law.

12.5 Limitations Period. Any claim or cause of action arising under or otherwise relating to this Agreement, any Order, or the Licensed Products, Support, Services or other subject matter hereof or thereof, whether based on contract, tort or otherwise, must be commenced within one year from the date such claim or cause of action first arose.

**Section 13. Term and Termination**

13.1 Term. This Agreement shall become effective on the Effective Date and shall remain in effect for twelve (12) months. Thereafter the Agreement may be extended up to four (4) additional twelve (12) month periods, subject to the approval of the Licensor and Customer's Purchasing Officer or his designee.

Upon expiration of the initial term or period of extension, Licensor agrees to hold over under the terms and conditions of this Agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 90 calendar days unless mutually agreed on in writing). For the avoidance of doubt, during such hold-over period, Licensor shall only be required to provide Customer the Support services set forth in Section 8.2(a) above and shall not be required to provide Customer with any Updates or Versions or other Support services.

13.2 Termination. (a) Either party may terminate this Agreement in its entirety, or in part with respect to an Order for Services, at any time upon thirty (30) days prior written notice, if the other party materially fails to comply with any of the terms

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and conditions of this Agreement and such failure is not cured by the end of such thirty (30)-day period. Licensor may terminate this Agreement immediately if Customer materially fails to comply with Sections 2, 3, 4, 5 or 6 of this Agreement.

(b) Unless otherwise specified by the parties in writing, either party may terminate this Agreement in part with respect to the delivery by Licensor of any of the Services upon thirty (30) days' advance written notice. Upon any such partial termination, Licensor shall advise Customer of the extent to which performance of a terminated Service has been completed through such date. Licensor shall be paid for all work performed and expenses with respect to such Service through the date of termination.

13.3 Effects of Termination. Upon termination of this Agreement for cause by Licensor, including due to violation by Customer or Affiliates (or their respective Users) of Sections 2, 3, 4, 5, 6 or 10.1 or for failure to pay any license fee or contractually required Support Fee due hereunder or any applicable Order ("Licensor For-Cause Termination"), Customer shall immediately cease using the Licensed Products, return all of the Licensed Products (including all copies thereof, in whatever form) to Licensor, and return to Licensor all of its Confidential Information in tangible form, destroy or erase any computer entries, database entries and any other recordation of Licensor Confidential Information.

13.4 Survival. In the circumstance of a Licensor For-Cause Termination, all license rights granted under Sections 2 and 3 shall be terminated, provided Sections 4, 5, 6, 7 (to the extent payment is still due by Customer) 10.4, 10.5, 12, 13, 14 and 15 shall survive any such termination of the Agreement. In the circumstance of a Customer ceasing to maintain Support or expiration of the Agreement, Sections 2, 3, 4, 5, 6, 7 (to the extent payment is still due by Customer) 10.4, 10.5, 12, 13, 14 and 15 shall survive any such termination or expiration of the Agreement.

## Section 14. Governing Law and Dispute Resolution

14.1 Governing Law. The Agreement is made under and shall be governed by the laws of the State of Texas, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

14.2 Injunctive Relief. Notwithstanding an agreement of the parties to submit disputes under this Agreement for resolution by arbitration, each party agrees that any actual or threatened breach by the other of its obligations under this Agreement relating to proprietary rights, confidentiality and non-disclosure of Confidential Information may cause irreparable damage for which legal remedies are inadequate, and each party agrees that the other may seek immediate injunctive or other equitable relief restraining such actual or threatened breach in any judicial forum, without the need to first secure a judgment or award and without the need to seek arbitration and follow any procedures related thereto.

14.3 Dispute Resolution Method and Venue. If a dispute arises out of or relates to the Agreement, 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.

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, Customer and Licensor 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 Agreement 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. 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. Customer and Licensor 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.

## Section 15. Miscellaneous Provisions

15.1 Export Controls. Customer acknowledges that the Licensed Products are subject to export controls under United States laws and regulations, including the Export Administration Regulations, 15 C.F.R. Parts 730-774, and may be subject to other applicable laws and regulations in other jurisdictions relating to export, re-export, import, transfer or other disposition of software and other technology (collectively, "Export Control Laws"). From and after Licensor's delivery of the Licensed

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Products to Customer, Customer shall comply with any and all applicable Export Control Laws applicable to the Licensed Products.

15.2. **Government Use.** In the event that Customer is an agency of the United States Government or that a license granted hereunder is pursuant to a contract with either a defense or civilian agency of the United States Government, Customer acknowledges that the Software and Documentation, respectively, provided to Customer hereunder constitute commercial computer software and commercial computer software documentation developed at private expense and are subject to the terms and restrictions of this Agreement pursuant to FAR 27.405-3 and DFARS 227.7202. The contractor/manufacturer is Licensor, with an address set forth on the applicable Order.

15.3 **Entire Agreement.** This Agreement, including its Schedules and exhibits, together with all Orders, (i) collectively constitute the entire agreement between the parties, and (ii) supersede all prior agreements, understandings, proposals and communications, oral or written, relating to the subject matter of this Agreement. Any purchase order, requisition, work order, request for proposal or other document or record prepared, issued or provided by or on behalf of Customer relating to the subject matter of this Agreement is for administrative convenience only and will have no effect in supplementing, varying or superseding any provisions of this Agreement, regardless of any acknowledgement thereof by Licensor.

15.4 **Precedence.** In the event of any inconsistency or conflict between the terms and conditions of this Agreement and any Order, schedule, exhibit or other attachment, the order of precedence shall be as follows: first, the body of this Agreement; then, any applicable schedules or exhibits to this Agreement; then, any Order; then any exhibits or other attachments to any Order. In the event of conflict between this Agreement and any Order, the body of this Agreement shall govern and control, except to the extent such Order makes clear that this Agreement is being amended by such Order.

15.5 **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision shall be, to the maximum extent permitted by applicable law, construed or limited, and/or deemed replaced by a revised provision, to the extent (and only to the extent) necessary to render it valid, legal and enforceable and, as nearly as possible, to reflect and achieve the parties' intentions in agreeing to the original provision. If it is not possible to so construe, limit or reform any such provision, then the invalid, illegal or unenforceable provision shall be severed from this Agreement. The remaining provisions of this Agreement shall be unaffected thereby and shall continue in full force and effect.

15.6 **Amendment; Waiver.** This Agreement may be modified or amended by a writing expressly identified as an amendment and signed by both parties. Unless otherwise provided in an amendment, Licensor reserves the right to modify, in its discretion, the terms in the body of this Agreement in connection with (i) the general release of future versions, updates, or upgrades of the Software; and/or (ii) the issuance of invoices for Services. Customer will be provided an opportunity to review and accept or reject any modified Agreement, but continued use of the Software will be subject to Customer's acceptance of such modified Agreement.

15.7 **No Third Party Beneficiary.** No third party is intended to be or shall be a third party beneficiary of any provision under this Agreement. Licensor and Customer shall be the only parties entitled to enforce the rights set out in this Agreement.

15.8 **Assignment.** The Agreement shall be binding upon and enure to the benefit of Customer and Licensor and their respective successors and assigns, provided however, that no right or interest in the Agreement shall be assigned and no obligation shall be delegated by either party without the prior written consent of the other party. Notwithstanding the foregoing, no consent of Customer shall be required for an assignment by Licensor to an Affiliate that is not listed on the Federal Debarred and Suspended Vendor List. Any attempted assignment or delegation by Licensor shall be void unless made in conformity with this paragraph. The Agreement 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 Agreement.

15.9 **Force Majeure.** Except for payment obligations, neither party will be liable to the other for any failure or delay in performing its obligations under this Agreement due to any cause beyond its reasonable control, including, without limitation, fire, flood, earthquake or other natural catastrophes, acts of war, terrorism or civil disobedience, governmental acts, laws or regulations, embargoes, labor strikes or difficulties, failures of third party suppliers, acts or omissions of carriers, transmitters, providers of telecommunications or Internet services, vandals, hackers, transportation stoppages or slowdowns or the inability to procure parts or materials. Each party will use reasonable efforts to give written notice to the other promptly after becoming aware of any condition or event causing any such excusable performance failure or delay.

15.10 **Insurance.** The following insurance requirements apply to this Agreement.

15.10.1 **General Requirements**

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15.10.1.1 Licensor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Agreement and during any warranty period.

15.10.1.2 .Licensor shall provide a Certificate of Insurance as verification of coverages required below to Customer at the below address prior to contract execution and within fourteen (14) calendar days after written request from Customer.

15.10.1.3 Licensor must also forward a Certificate of Insurance to Customer whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

15.10.1.4 Licensor shall not commence work until the required insurance is obtained and has been reviewed by Customer. Approval of insurance by Customer shall not relieve or decrease the liability of Licensor hereunder and shall not be construed to be a limitation of liability on the part of Licensor.

15.10.1.5 Licensor's insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

15.10.1.6 The Certificate of Insurance shall contain the solicitation / contract number, the Customer's name, and shall be mailed to the following address:

Attn: Mick Osborne

MSO0047

City of Austin

Purchasing Office
P. O. Box 1088

Austin, Texas 78767

15.10.1.7 The "other" insurance clause shall not apply to Customer. It is intended that policies required in the Agreement, covering both Customer and Licensor, shall be considered primary coverage as applicable.

15.10.1.8 If insurance policies are not written for amounts specified, Licensor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

15.10.1.9 Customer reserves the right to review the insurance requirements set forth during the effective period of the Agreement.

15.10.1.10 Licensor shall not cause any insurance to be canceled nor permit any insurance to lapse as required in the Agreement.

15.10.1.11 Licensor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies.

15.10.1.12 Licensor shall endeavor to provide Customer thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Agreement.

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15.10.2 **Specific Coverage Requirements.** Licensor shall at a minimum endeavor to carry insurance in the types and amounts indicated below for the duration of the Agreement, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of Licensor.

15.10.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are $500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

15.10.2.1.1 Blanket contractual liability coverage for liability assumed under the Contract and all other Agreements related to the project

15.10.2.1.2 Independent Agreement's Coverage

15.10.2.1.3 Products/Completed Operations Liability

15.10.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage

15.10.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage

15.10.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage

15.10.2.2 **Business Automobile Liability Insurance.** Licensor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of $500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are $250,000 bodily injury per person, $500,000 bodily injury per occurrence and at least $100,000 property damage liability per accident. The policy shall contain the following endorsements:

15.10.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage

15.10.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage

15.10.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage

15.10.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are $100,000 bodily injury each accident, $500,000 bodily injury by disease policy limit and $100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

15.10.2.3.1 Licensor's policy shall apply to the State of Texas

15.10.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage

15.10.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC 420601, or equivalent coverage

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15.10.2.4 **Professional Liability Insurance.** Licensor shall provide coverage at a minimum limit of $250,000 per claim to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement..

15.10.2.5 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for Customer's review and approval.

15.10.2.6 **Certificate.** The following statement must be shown on the Certificate of Insurance.

"The City of Austin is an Additional Insured on the general liability and the auto liability policies. A Waiver of Subrogation is issued in favor of City of Austin for general liability, auto liability and workers compensation policies."

15.11 **Independent Contractor.** Each party's relationship to the other is that of an independent contractor. Nothing in this Agreement, and no course of dealing between the parties, shall be construed to create a partnership, joint venture or employment or agency relationship between the parties or between Customer and any Licensor employee, agent or contractor. Neither party has any authority to bind, incur liability for or otherwise act on behalf of the other party, and neither party will represent or imply that it has any such authority.

15.12 **Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been received upon personal delivery, by facsimile (followed by delivery of a hard copy thereof within five (5) business days of such facsimile), by commercial overnight courier service, or five (5) business days after mailing by certified or registered mail to the address for such party provided in the Order.

15.13 **Electronic Documents.** Any document in electronic format or any document reproduced from an electronic format shall not be denied legal effect, validity, or enforceability solely for that reason and shall meet any requirement to provide an original or print copy.

15.14 **Equal Employment Opportunity.** No Licensor or Licensor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to Customer shall be considered, nor any Purchase Order issued, or any contract awarded by Customer unless Licensor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Licensor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit C within fourteen (14) calendar days after written request from Customer. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the Agreement and Licensor's suspension or debarment from participation on future Customer contracts until deemed compliant with Chapter 5-4.

15.15 **Interlocal Purchasing Agreements.**

15.15.1 Customer has entered into Interlocal Purchasing Agreements with other governmental agencies pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. Licensor agrees to offer the same prices and terms and conditions to other eligible agencies that have an Interlocal agreement with Customer; provided that such other agencies enter into separate written agreements directly with Licensor.

15.15.2 Customer does not accept any responsibility or liability for the purchases by other governmental agencies through an Interlocal cooperative agreement.

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EXHIBIT C
Scope of Work

## Scope of Work

## Purpose

As the City strives to be the best managed municipal government in the country, a goal is to implement web-based applications and technologies that will strongly enforce the vision of becoming a clear leader in openness and transparency. Guided by this principle, the City completed an in-depth analysis of its needs and requirements to select an audit management solution that will serve the needs of the Office of the City Auditor. Thorough, comprehensive procurement processes lead the City project and technical team to select the CCH TeamMate Suite of solutions (the "system"). The primary goal is to perform a more consistent execution of the audit methodology, improve the ability to manage and monitor resource productivity, and increase the efficiency of work paper preparation, review, and retention. These objectives can only be obtained by obtaining proposals for implementing a new system that includes the following minimum attributes:

- An application that includes The Automated Working Paper Project (AWP) functionality required to streamline and conduct business efficiently and effectively

- An application that is made available to the user within a secure technical environment

- An implementation plan that assures a successful project

### Summary

This Scope of Work ("SOW") covers the City's purchase of the TeamMate Suite solution. Once fully implemented, the vendor product will provide:

- Technical documents, Implementation/Installation/User Guides are available for download,

- The number of licenses purchased initially will be 21 to 30. Additional licenses may be purchased at a minimum of 1 to 5 or 6 to 10 tiers of the CCH Teammate current price list at the time of additional license purchase. For example, if the City needs 3 additional users, the City will be required to purchase the 1 to 5 users tier based on current price at time of purchaser

### Scope

### Task 1 – Product Implementation

The following deliverables/activities will be created or performed during this phase of the project:

| Deliverable | Purpose/Description | Acceptance Criteria | Key Activities/Responsibility |
|---|---|---|---|
| Install TeamMate | TeamMate is installed in the Office of the City Auditor's Test environment. Note: All TeamMate Modules will be installed. | Application can be brought up without error. The System installation is documented and understood by Office of the City Auditor Resources responsible for implementation and ongoing support. | Install – CCH with assistance from Office of the City Auditor Resources. |
| System Configuration | TeamMate to be configured to accommodate Office of The City Auditor  TeamMate is a shrink- | Configuration / designs / functionality are reviewed and approved. | Configure System: CCH and Office of the City Auditor Resources.  Review and approve: Office of the City Auditor Resources. |

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| Deliverable | Purpose/Description | Acceptance Criteria | Key Activities/Responsibility |
|---|---|---|---|
| | wrapped software solution configured per CCH system specification sheets (See CCH TeamMate Suite IT Overview Document - Section 6.3 of RFP) | | |
| Acceptance Testing | Testing System functionality will be validated against the requirements<br><br>Test case scenarios are conducted, results are documented and compared to expected results, identified problems are resolved and retesting occurs as necessary. | Testing of TeamMate solution occurs. Testing is reviewed for completeness.<br><br>Test results are reviewed and approved.<br><br>Problem resolutions are verified and approved. | Create scripts: Office of the City Auditor<br><br>CCH IT Consulting will verify TeamMate is operational & functional – Office of the City Auditor Resources<br><br>Problem Resolution: CCH<br><br>Verification: CCH and Office of the City Auditor Resources. |
| Implementation to Production | TeamMate application is migrated to the Office of the City Auditor's production environment. | Production change notification sent.<br><br>TeamMate application brought up successfully in production environment. | Implement: Office of the City Auditor Resources. CCH IT Services for $1,875 is for 1 environment only. |

## Task 2 – Training

This phase will see CCH deliver training and training materials in order to ensure all users understand how to use the System and technical team can best support the System, as well as provide the knowledge and tools necessary for the Office of the City Auditor to train any new users. The following deliverables/activities will be created or performed during this phase of the project:

| Deliverable | Purpose/Description | Acceptance Criteria | Key Activities/Responsibility |
|---|---|---|---|
| Implementation & Training | Upon completion of application installation, CCH will conduct two days of on-site, hands-on technical, configuration, and system administration training for up to 4 users.<br><br>In addition, CCH will provide two days of onsite instructor led end-user training. Each day will consist of 1 class for a maximum of 20 attendees. This training will include TeamMate EWP, TeamCentral, and TeamStore. | Training has been held for all work areas affected by the new System. | CCH will provide with assistance from Office of the City Auditor Resources. |

# CCH TeamMate Support

Telephone and e-mail support is currently available to the Licensee Support Contact a minimum of eight (8) hours per day, Monday through Friday, from 8:30 AM to 7:00 PM US ET. Support is also provided by our virtual 24-hour TeamMate User Support Hotline, which is currently available by telephone in the United States, United Kingdom, Australia, and South Africa.

Licensees are encouraged to contact their nearest local or Theatre Hotline support number during standard support hours. For contact before or after local hours, licensees may contact a Help Desk representative in another country location, via either e-mail or direct phone line. These e-mail and telephone numbers may be found within the TeamMate software under the menu option Help | Technical Support.

Each call is initially routed to a Level 1 technician, whose goal is to troubleshoot and resolve the problem while on the call. If the call is not resolved within 24 hours, the call is routed to a Level 2 technician, who may need to research the issue, and will communicate to the caller that he/she will get back to the caller within the next business day. If the issue still cannot be resolved, the call is routed to a Level 3 technician (development level) who will perform further research, and continuously communicate with the caller until the issue is resolved. All issues are handled through the support team. When development input is required, it will be done through the support person owning the case.

We do not utilize Service Level Agreements at this time. All support is delivered at the same level. All issues are prioritized based upon impact on the customer. Example, if an audit is inaccessible this would take priority over other issues.

Licensees also have access to the Global TeamMate User Community website. This website, for all registered TeamMate users, has been designed as the complete "one-stop" portal for TeamMate users to obtain database support and user manuals, learn of service packs/enhancements, share best practices and experiences, and learn of TeamMate News and Events (such as the User Forum) and any other TeamMate needs.

**System Requirements**

The System shall meet or exceed all of the following Technical Requirements. The following requirements are for All Solutions and the Category of Application Software.

| Req # | Requirement Description | Required Response | Rating | Vendor Response | Vendor Response Description | City Response |
|---|---|---|---|---|---|---|
| T001 | The desktop component of the solution will be able to run on the MS XP Operating System (City desktops are managed via the network). In addition, the vendor will have plans to support Microsoft Windows 7 desktop OS. | Describe what operating environment is used by the solution. Indicate whether Microsoft Windows 7 is (or will be) supported, and when. | Expected | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 3.1 | Acceptable |
| T002 | If the solution is client-server architecture, the client software will be Citrix compliant. | Describe how users can be operated by remote access over a network via Citrix sessions. Indicate whether the proposed solution is currently running successfully in a Citrix environment at customer sites. | Expected | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 3 TeamMate will work under Ctirix or Terminal Services. | Acceptable |
| T003 | The vendor will identify any third-party software products used within the proposed system configuration. | List any third-party software products used within the proposed configuration. Include third-party DB management products, report/query tools, client-side products required. Also list any third-party tools supported, but not provided (i.e. report writing) | Expected | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 4 | Acceptable |

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| T004 | Patch updates to operating system software, application software, database software and client software will be tested and identified for implementation within 5 days of a new patch release. | Describe how patch updates are tested and approved for implementation within 5 days of a new patch release (i.e. server, OS, application, browser, and database). Provide the average time required by your organization to test and approve patches and upgrades. | Expected | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.16 | Acceptable |
| T005 | The Vendor will provide documentation depicting the technical architecture of the components of this solution, including a simple network architecture diagram. | Provide the documentation of the solution and indicate its limitations. Provide a simple diagram of the proposed solution architecture, showing the hardware components and indicating the types of data exchange between components. | Must Have | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 2 | Acceptable |
| T006 | The proposed solution client software will not depend on Microsoft Office applications for proper operation. | List any dependencies that the proposed solution has on Microsoft Office applications. | Expected | Base Functionality | TeamMate is not dependent upon the usage of Microsoft Office, but there are certain integration features only available when using Microsoft Word and Excel. See CCH TeamMate Suite IT Overview Document - Section 6.12. Files of | Acceptable |

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| | | | | | other types can be imported. | |
| T007 | If the application is web-based, the solution will support updated versions of Internet Explorer and Firefox client web browsers within 30 days of new releases of the browsers. | Explain how the proposed solution is tested and certified for compliance with new releases of Internet Explorer and Firefox web browsers. | Expected | Base Functionality | TeamMate is certified for use with Internet Explorer 7 & 8. Firefox is not supported as a standard application.<br><br>See CCH TeamMate Suite IT Overview Document - Section 3.4 | Acceptable |
| T008 | The proposed solution's client interface (whether client software or web browser) will maintain compatibility with routinely updated desktop components such as browser interim update releases, updates to Java and Javascript, Windows and OS security patches. | Describe how your software developers routinely test the application user interface for compatibility with routinely update desktop OS components. | Must Have | Base Functionality | Prior to the release of TeamMate, we test for what is available through Microsoft and the scope of the software. When new updates from Microsoft come out, we will test accordingly for new releases. | Acceptable |
| T009 | If desired by the Customer, the solution will provide the Customer with multiple environments for production, version testing (application updates and OS updates) and training. | Describe how the Customer can test and validate new releases or updates to the application software and/or operating system prior to putting the updated software into production. Explain licensing requirements for multiple | Expected | Base Functionality | We recommend that there is a development environment used to test the software prior to going into production. Ultimately this is up to each client. | Acceptable |

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|---|---|---|---|---|---|
| | | environments. | | | |
| T010 | If data archiving is provided, the solution will enable data storage and retrieval from archived data. | Describe the limits for archiving data. Describe how data is stored and retrieved. | Expected | Not Available | We use SQL as a backend. We do not currently have an archival model for TeamMate.<br><br>See CCH TeamMate Suite IT Overview Document - Section 6.7 | Functionality Not Required |
| T011 | If data archiving is provided, the solution will allow a user with appropriate privileges to define datasets to be archived, retention periods for current and archived data, and the date and time of archival. | Describe the solution's data archiving solution. Indicate if a user with appropriate privileges can define datasets to be archived, retention periods for current and archived data, and the date and time of archival. Describe all other user-definable features | Expected | Not Available | We use SQL as a backend. We do not currently have an archival model for TeamMate.<br><br>See CCH TeamMate Suite IT Overview Document - Section 6.7 | Functionality Not Required |
| T012 | The solution will allow users with appropriate permissions to view & print application error logs online. | Describe how a user with appropriate permissions views and prints application error logs. Describe the error logs available, and the content of each log. | Expected | Not Available | Logs are sent to the users App Data Roaming profile and also the Event Viewer. Neither one of these are available online.<br><br>See CCH TeamMate Suite IT Overview | Functionality Not Required |

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| T013 | Application updates and operating system security patches will be administered without downtime. | Describe the process used to apply application updates. Describe how the operating system security patches can be administered without downtime. | Expected | Not Available | When updates to TeamMate are implemented, all users will need to be out of the database and software to administer correctly. OS updates are the responsibility of the client. | Functionality Not Required |
| T014 | The proposed solution will be capable of providing 99.9% uptime. This level of availability may be directly supported by the proposed solution, or may use third-party tools and methods to achieve 99.9% uptime. | Explain how the solution can be designed to support this level of uptime. Indicate tools and methods supported by the solution to provide the uptime requirement (such as hardware fault tolerance, clustering, mirroring, high availability platforms, etc.). | Must Have | Base Functionality | TeamMate can run 24/7 - We use Microsoft's Best Practices - Therefore if your IT department is using any thing to allow high availability, TeamMate will adhere to this networking model. | Acceptable |
| T015 | The solution will be able to recover specific data records and/or files from backup and/or near-line storage. | Explain how certain selected records and/or files can be recovered from backup data and made available to the application. | Expected | Not Available | Since we are using SQL as a backend database server, you will only be bale to restore a full backup from your backup and recovery model in place. We use Microsoft's best practices and SQL server | Functionality Not Required |

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| T016 | The solution will be scalable for future growth. | Provide the number of concurrent users the proposed system can support, and explain the software and hardware changes required to allow growth. Include the licensing structure and the cost levels. | Expected | Base Functionality | TeamMate will allow future growth as long as you have the proper hardware specification s in place. | Acceptable |
| T017 | Authorized users will be able to control and correct suspended or aborted transactions caused by an unexpected system, network or workstation outage. | Describe how the Administrator can correct suspended or interrupted transactions (i.e. ACID Test Compliance). | Expected | Not Available | The Admin can not suspend or interrupt transactions. We either fully write to the database, or the process will roll back. | Functionality Not Required |
| T018 | The solution will include a method of purging record data from the production database(s). | Describe the methods/rules available for purging record data from the production database(s). Explain how referential integrity is enforced when records are purged. | Expected | Base Functionality | TeamMate will allow certain deleting and or editing depending on the business rules within the software. | Acceptable |
| T019 | The Vendor will explain the relationships between data stored on the main servers, the report servers (if applicable), the training servers (if applicable), the archive servers (if applicable), and any off line data. | Describe the relationships between data stored on the main servers, the report servers, the training servers, the archive servers, and any off line data. | Expected | Base Functionality | TeamMate will use one database at a time. You can not cross over from one database to another. Data entered in off-line mode can be synchronize d/merged using the | Acceptable |

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| | | | | | functions provided within TeamMate. | |
| T020 | The application will manage concurrent data updates by multiple users without creating deadlocks or data loss. | Describe the methods or technologies used by the solution to prevent data loss or deadlock conditions when multiple users are updating data. | Expected | Base Functionality | Multiple users and updating tables simultaneou sly are supported. See CCH TeamMate Suite IT Overview Document - Section 6.3 | Acceptable |
| T021 | The solution will ensure master file records cannot be deleted if any child records exist (referential integrity). | Explain how the master file records cannot be deleted if any child records exist. | Expected | Base Functionality | The only deleting of data is support throughout the GUI of TeamMate. Due to policy and business rules, only certain users will be granted access to do such a task. | Acceptable |
| T022 | The proposed system will provide data integrity to ensure the accuracy and availability of the data at all times. | Explain how the application ensures data availability and accuracy at all times. | Desired | Base Functionality | We use the best practices for Microsoft SQL server | Acceptable |
| T023 | The solution will provide a method for archiving historical data. | Explain the process for archiving historical data. Include information on archiving, retrieval, and purging record data and attached documents. Describe features available to authorized users for selecting records for | Expected | Not Available | We do not currently have an archival process. | Functionality Not Required |

| | | archiving. | | | | |
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| T024 | If specified in Functional Requirements, the solution will allow one or more files to be attached to, or associated with, a data record. (i.e. text files, scanned images, digital photos, faxes, etc.). | Describe how the solution allows one or more files to be attached to a data record. (i.e. text files, scanned images, digital photos, faxes, etc.) and list the maximum file sizes allowed. | Desired | Base Functionality | TeamMate offers the ability to import WorkPapers into the EWP module to support your findings. | Acceptable |
| T025 | The solution will perform forms-based data validation (field level validation) and display error messages when validation fails (i.e. user enters text in a numeric field). | Explain how the solution validates data entry and handles error messages and the level of criticality of each type of error (i.e. data validation, omitting a required field, etc.). | Expected | Not Available | We do not have validation tools per se. But with our drop down menus and text fields, the data entry is straight forward with what is acceptable in each field. | Functionality Not Required |
| T026 | Tables or logs of transaction updates will be maintained that indicate the data element value(s) changed and the date, time, and User ID of the person making the change. | Describe how the solution uses tables or logs of transaction updates to indicate the data elements changed and the date, time, and User ID of the person making the change. | Expected | Base Functionality | The Edit History in TeamMate EWP will show the User ID of person making change, as well as date and time. We do not track specific changes made. | Acceptable |
| T027 | If bulk or batch data loads are supported, the solution will use the same data validation criteria for bulk data loads as it does for manual data entry. | If bulk or batch data entry is supported, explain the data validation performed by the application on the bulk loaded data. | Expected | Not Available | | Functionality Not Required |

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| T028 | The application will support user-defined fields, and Application authorized users will be able to create, store, and retrieve data elements that are not part of the standard application. | List any existing user-defined fields and describe the process to add additional user-defined fields. Also describe the process to integrate the user-defined fields in screens, reports, and queries. State any limitations of using user-defined fields. | Expected | Not Available | User-defined fields are not available. However, using the configuration options available within TeamMate, users can modify labels and selection lists, essentially defining the way fields are used. | Functionality Not Required |
| T029 | The solution database will be well-documented, including a current data dictionary and Entity Relationship Diagram (ERD). | Provide a data dictionary and Entity Relationship Diagram (ERD) for the proposed solution. | Expected | Base Functionality | We do have a database schema available to clients. | Acceptable |
| T030 | Future releases of the application will NOT render historical and/or archived data unusable. | Describe how historically archived data is supported regardless of changes to the application data schema. | Expected | Not Available | We do not have an archival model - but TeamMate will update the database in order to support the newer version of TeamMate when available. | Functionality Not Required |
| T031 | The solution will include a transaction update confirmation or failure notification for user transactions, batch transactions and system administrator transactions. | Describe how the application informs the end user of success or failure of attempted transactions, including user transactions, batch transactions and system administrator transactions. | Expected | Not Available | TeamMate does not have this functionality. | Functionality Not Required |
| T032 | The proposed solution will include a detailed explanation of any real-time or | List and describe any/all real-time or near real-time data | Must Have | Not Available | | Functionality Not Required |

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| | near real-time data interchange required to/from other systems. | interchange to/from other systems required by the proposed solution. | | | |
| T033 | If email is used within the application, the email component will be SMTP and/or Microsoft Exchange compliant and provide a messaging development environment through the provision of documented APIs. | Describe the application's messaging architecture, and indicate if the solution is SMTP and/or Microsoft Exchange compliant and how it provides a development environment through the provision of APIs. | Desired | Base Functionality | We use SMTP for email functionality. See CCH TeamMate Suite IT Overview Document - Section 6.1.11. | Acceptable |
| T034 | The solution will support the import/export of data from/to various other data sources/repositories (i.e. comma delimited, text, HTML, XML, SQL, etc.). | List the various data sources and data formats that the system imports/exports. | Desired | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.11. | Acceptable |
| T035 | The solution will generate reports in a variety of file formats, including XML, PDF etc. | Describe the solution's process for generating reports and data extracts files in a PDF format. List all formats produced by your application. | Desired | Base Functionality | See CCH TeamMate Suite IT Overview - Section 6.14 | Acceptable |
| T036 | The solution will use standard (published) API's for interfaces to other systems. | List the standard (published) API's that the solution uses to interface with other systems. List any proprietary APIs used. | Expected | Not Available | We do not support the use of other systems. | Functionality Not Required |
| T037 | If the proposed solution is to be provided to remote end users, the distribution of data will minimize the | Describe the types and volumes of data sent between clients, and clients & | Expected | Not Available | We use Microsoft's best practices over the WAN - what | Functionality Not Required |

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| | amount of data sent over the WAN. | servers. | | | is available to a user on the LAN is also available to a user over the WAN. | |
| T038 | The proposed solution's components will be capable of being monitored by network management tools to determine that the components are communicating properly. | Describe how the solution allows the system or network administrator to monitor the solution's availability. | Expected | Not Available | We do not test network monitoring tools with TeamMate. | Functionality Not Required |
| T039 | The Vendor will use standard Domain Name Services (DNS) for identifying all server components in the system. | Explain how that the system uses standard Domain Name Services (DNS) for identifying all server components in the system. | Expected | Base Functionality | DNS is supported by Microsoft's best practices. | Acceptable |
| T040 | The solution software will use an accurate, verifiable time source such as GPS clock, NTP or Stratum time source for a traceable time stamp, which is applied to various transactions or key events. | Explain how the solution takes advantage of a traceable time stamp using an NTP source. | Must Have | Not Available | | Functionality Not Required |
| T041 | If the solution back-end components use date/time stamping, the client-side components will be synchronized with the back-end servers. | Indicate whether the application client components are synchronized with the back-end components, and explain how the sync occurs. | Must Have | Not Available | | Functionality Not Required |
| T042 | TCP/IP switched and routed protocol will be used as the sole network protocol for both LANs and WANs. | Describe how the systems uses TCP/IP common transmission and management protocol as the sole network | Expected | Base Functionality | Please see CCH TeamMate Suite IT Overview Document - Section 6.1 | Acceptable |

| | | protocol for both LANs and WANs. Identify any non-TCP/IP protocols used in the solution (i.e. SMB, NETBEUI) | | | | |
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| T043 | The Vendor will provide or recommend a backup process that does not impact the performance of the core system or the availability of online data. | Describe a backup process that does not impact the performance of the core system or the availability of online data. If the proposed solution does not include a backup tool, recommend one that has been tested with your system. | Expected | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.7 | Acceptable |
| T044 | The application will be able to fully support the number of concurrent users specified in functional requirements without any system modification to the application as proposed. | Describe the application limitations for concurrent use. Describe system requirements for growth beyond the specified number of concurrent users. | Must Have | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.3 | Acceptable |
| T045 | The solution will not require operating system administrator privileges on the client workstation(s) to run or receive application updates. | Describe the level of privileges required to install application updates and indicate if the application requires workstation administrator privileges to execute or update. | Expected | Not Available | You will need Admin rights to install TeamMate and Updates. | Functionality Not Required |
| T046 | If bulk data loads via the Internet are supported by the solution, a secure network transport method for bulk data | Describe how the solution supports secured and/or encrypted transports of data if bulk data | Expected | Not Available | | Functionality Not Required |

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| | will be supported. | load is supported via the Internet. | | | | |
| T047 | When new users are created, the security permissions assigned to the new accounts will default to least privileged. | Describe the process of creating a new user in the system, and explain the default system privileges assigned to new user accounts. | Expected | Not Available | New Users are created and then security is set at that time. There is not a default. | Functionality Not Required |
| T048 | Authorized users will have the ability to monitor (in near real-time) and report on file access activities for a particular user, group, application, device, and file. | Describe how the solution provides real-time capability to selectively monitor and report on file access activities for a particular user, group, application, device, and file. | Desired | Not Available | | Functionality Not Required |
| T049 | The solution will provide authorized users the ability to track and log all transactions originating from external network sources. | Describe how authorized users track and log all transactions originating from external network sources. Verify that log data includes destination host IP address, originating source host IP address, date, and time. | Desired | Not Available | | Functionality Not Required |
| T050 | The solution will NOT use Active Server Pages for web-based communications. | Explain if the solution uses Active Server Pages. | Desired | Not Available | TeamMate uses Active Server Pages in IIS of the websites of TeamMate. | Functionality Not Required |
| T051 | To maintain network security, the solution will allow re-assignable network ports for the solution. | Provide a list of re-assignable ports utilized by the solution. | Expected | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.8 | Acceptable |
| T052 | The solution will minimize the number of different IP ports | Describe how the solution minimizes the | Expected | Not Available | See CCH TeamMate Suite IT | Functionality Not Required |

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| | and protocols to limit exposure and simplify security administration. | number of IP ports and protocols used and provide a list of IP ports and protocols utilized. | | | Overview Document - Section 6.8 | |
| T053 | When the vendor is connected to the City's VPN for solution support purposes, single tunneling is required (which means that they are disconnected from their local network during the VPN session). | Describe how solution support personnel use VPNs to support the application at the customer site, and indicate whether single-tunneling will be enforced. | Must Have | Base Functionality | VPN usage is up to each client. | Acceptable |
| T054 | If the solution provides a Web server, the solution's Web interface will be able to operate a secure communication session as SSL 128 bit encrypted HTTPS. | Describe how the solution's Web interface is able to operate a secure communication session as SSL 128 bit HTTPS. | Must Have | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.1 | Acceptable |
| T055 | The solution will provide and enforce complex password formats. Passwords will be a minimum of 8 characters, and will allow use of upper and lower case and numeric and special characters. | Explain all password format options provided by the solution, and how passwords are managed and enforced. | Must Have | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.5.3 | Acceptable |
| T056 | Passwords will not be displayed as readable text when users are entering them on-screen | Describe how system allows end users to type in their password in a non-printing, non-displaying manner (i.e. *****). | Must Have | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.9 | Acceptable |
| T057 | Passwords will NOT be included in automated sign-on procedures, stored unencrypted in cache, or transmitted as clear text over the network. | Explain how passwords are managed, stored and transmitted over the network. | Must Have | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.9 | Acceptable |

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| T058 | The solution will be capable of supporting tiered user permissions to provide application security. | Explain/Describe the tiered permission capabilities the solution offers. Explain how roles/groups/permissions are defined and assigned. | Must Have | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.9 | Acceptable |
| T059 | If secure data transport is required, the solution will provide a method of encrypting the application data between the front-end user system and the back-end servers. | Describe the encryption methodologies provided by the solution for transport of application data. | Expected | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.5 | Acceptable |
| T060 | The system will protect against unauthorized access to data by persons and other software programs. | Describe how system provides security protection against unauthorized access to the database. | Expected | Base Functionality | If you don't have a user account and access to the TeamMate software, you will not be given access. | Acceptable |
| T061 | To help enforce Customer's security policies, the solution will provide a secondary means of identifying system users (i.e. workstation identification numbers, TCP/IP addresses, vendor assigned client IDs, or public key authentication). | Describe how the solution identifies a system user by means other than the user login and password. | Expected | Base Functionality | We support the use of Active Directory | Acceptable |
| T062 | The application will provide a transaction log related to changes made to security (roles/groups/permissions). | Provide an example of the security transaction log provide by the application and explain how authorized users can access the log. | Expected | Not Available | | Functionality Not Required |

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| T063 | To help enforce Customer's security policies, the solution will allow the Administrator to disconnect a particular user and to lock out a user during an active session. | Describe how the solution allows the Administrator to lock out a particular user and to disconnect a user during an active session. | Expected | Not Available | You can lock a user out, once they log off. Not during the session. | Functionality Not Required |
| T064 | Authorized users will be able to define the number of login attempts allowed before a user account is locked and/or disabled. | Describe how authorized users define the number of login attempts before a user account is locked and/or disabled. | Expected | Not Available | This type of restriction is not inherent to TeamMate. However, if you use the Windows Authenticatio n model for access, your standard password rules will control access. | Functionality Not Required |
| T065 | The solution will log an event and alert the Administrator when a user exceeds login attempts. | Describe how the solution logs an event and alerts the Administrator when a user exceeds login attempts. | Expected | Not Available | This type of restriction is not inherent to TeamMate. However, if you use the Windows Authenticatio n model for access, your standard password rules will control access. | Functionality Not Required |
| T066 | The system will automatically log-off a user's work session due to inactivity within a Customer-defined period. | Explain the process used to define an inactivity time-out period, and describe what happens when the application detects an inactivity time-out. | Expected | Not Available | | Functionality Not Required |
| T067 | Authorized users will be able to create user IDs with an expiration date and time (I.e. for | Describe how authorized users create user IDs with an expiration date | Desired | Not Available | | Functionality Not Required |

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| | contractors and temps). | and time. | | | | |
| T068 | System authorized users will be able to create security profiles/templates to establish individual and group privileges. | Describe how authorized users create security profiles to establish individual and group privileges. | Expected | Not Available | We only have user accounts that dictate access. | Functionality Not Required |
| T069 | The application will allow the Application Administrator the ability to create user groups based on defined roles. | Describe how the Application Administrator can create user groups based on defined roles. | Expected | Not Available | | Functionality Not Required |
| T070 | The application will allow the Application Administrator to restrict generic logins. | Describe how the Application Administrator can restrict generic logins. | Expected | Base Functionality | If you use Active Directory this will be available. | Acceptable |
| T071 | The application will allow the Application Administrator to set the number of concurrent logins for a particular user on the same or on multiple workstations. The application will generate an alert if a user attempts or exceeds this number. | Describe the methods to limit the number of concurrent logins for a user on the same or on multiple workstations. What are the alerting methods if this number is exceeded? | Expected | Not Available | | Functionality Not Required |
| T072 | The solution will allow for multiple security roles for users (i.e.: Admin, Supervisor, Staff etc.) with appropriate permissions. | Describe how the solution functions in relation to user roles. Describe any predefined roles and the system access that each role has. Discuss both application software and DB management user permissions. | Must Have | Base Functionality | This will depend on the module you are in, but some TeamMate modules support multiple roles. | Acceptable |
| T073 | If the solution provides the means of user authentication, it will provide the ability for system users to change their active | Describe how end users can change their passwords, both current and expired. | Must Have | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.9 | Acceptable |

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| | or expired passwords. | | | | |
| T074 | The solution will implement intelligent input entry controls (i.e. drop-down selection lists, pre-formatted screens, shortcut keys, etc.) to make data entry more efficient. | List all intelligent input entry controls used by the solution (i.e. drop-down selection lists, pre-formatted screens, shortcut keys, etc.). If macros or shortcut keys are available, indicate whether they are user-definable. | Expected | Base Functionality | Drop-down selection lists are user-defined within the system. Additionally, certain fields can be exposed or hidden, at the user organization's discretion, to simplify the input process. | Acceptable |
| T075 | If the solution is web-based and usable by public citizens, it will be ADA and compliant with Section 508 of the Federal Rehabilitation Act (see http://www.access-board.gov/sec508/summary.htm). | Provide evidence of ADA/508 compliance for publicly accessible web interfaces. | Must Have | Not Available | Our websites are not supported to be public. They are only intended to be used as intranet sites. | Functionality Not Required |
| T076 | The application data entry forms will retain previously entered data if users will navigate between related screens and/or modules. | Explain how your application retains data when data entry is suspended or interrupted by the user navigating away from the current focus. | Expected | Base Functionality | If a user closes a specific screen, the data is saved automatically. If switch of focus is to another application, the data entered will remain as it was until the user returns to it. | Acceptable |
| T077 | Customer's system authorized users will be able to create and/or modify the content of on-screen error messages. | Describe how authorized users can create and customize error messages displayed to users. | Expected | Not Available | | Functionality Not Required |

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| T078 | End users will not have to log in separately to different modules of the application. A single sign-on will be all that is required. | Describe how system allows a user to sign on once to access the entire application according to their access rights. | Expected | Base Functionality | We support Windows Authenticatio n that provides single sign-on capabilities. | Acceptable |
| T079 | If the application provides help messages and/or usage tips, such screen messages will be definable by the Customer's administrator(s). | Provide screen shots of help screens and usage tip displays available to the application user. Explain how application users with appropriate permissions can define the text of help and tip messages. | Expected | Not Available | | Functionality Not Required |
| T080 | The solution will reduce repetitive keying for data entry fields such as dates, city, state, zip, etc. | Explain how the solution reduces repetitive data entry in application forms and/or tables (i.e. pre-fills, look-ups, etc.). | Expected | Base Functionality | TeamMate EWP provides the ability to use "Autotext", which allows each use to establish a list of standard text entry, such as date/time, initials, or other user-defined text. | Acceptable |
| T081 | A customizable application user interface will not require modification of program code. | Indicate how user screens and other user interface components may be customized by the Customer without requiring modification of program code. | Expected | Base Functionality | The GUI can be modified for user needs with text and colors, etc. | Acceptable |
| T082 | The solution will support automated alerting of specified users when key components are unavailable (such as DBMS, servers, interfaces, network | Describe the solution's tools/methods that support alerting of specified users when key resources are | Expected | Base Functionality | Using Windows normal error messages that components are | Acceptable |

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| | transport). | unavailable. | | | unavailable. | |
| T083 | The solution will be capable of utilizing computer storage devices (SAN). | Describe how the solution supports a SAN storage solution. | Expected | Base Functionality | If you are using a distributed model, you could use a SAN. | Acceptable |
| T084 | The solution will allow real-time monitoring, logging, and reporting on key application performance metrics. | Explain the method(s) provided with the application (if any) that provide real-time monitoring, logging and reporting on specific application performance metrics. If no monitoring is provided with the application, recommend a monitoring solution supported | Expected | Not Available | We do not have performance logging | Functionality Not Required |
| T085 | Executable server software processes will be capable of running as service(s) (or daemon(s)) that run automatically upon system start-up, and do not require a user login to start up. | Explain how server-side software processes are executed automatically, and indicate whether the processes are designed to be service (or daemon) processes. | Must Have | Not Available | | Functionality Not Required |
| T086 | The Vendor will specify any requirements for job scheduling software. The City currently supports UNIX CRON, Tivoli Work Scheduler, Oracle DBMS_JOBS and MS SQL DTS. | List any software requirements for job scheduling and explain what software is required, and what jobs are run via the scheduler. | Expected | Not Available | | Functionality Not Required |
| T087 | The City prefers Linux/UNIX OS for public web servers. Windows and Linux/UNIX | List the operating systems on which each component of | Desired | Not Available | We do not support public webservers. | Functionality Not Required |

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| | operating systems are acceptable for internal servers. | your application will run. If choices exist, indicate the OS's most commonly used by existing clients. | | | We only support Microsoft products. See IT Overview Document - Section 3 | |
| T088 | Linux/UNIX or Windows operating systems are preferred for application servers. | List the operating systems on which each component of your application will run. If choices exist, indicate the OS's most commonly used by existing clients. | Desired | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 3 | Acceptable |
| T089 | If applicable, the solution will be implemented using N-tier architecture. N-tier implementation will be capable of supporting load balancing across a series of solution servers. | Explain how the solution is implemented within the N-tier architecture, including load balancing across a series of solution servers. | Expected | Base Functionality | We support Load balancing - only by Microsoft's Best Practices. | Acceptable |
| T090 | If the proposed solution requires an Application Server, specify the recommended platform, including Operating System, OS version(s) and OS release(s) supported. | If applicable, provide both recommended and optimal specifications for the Application Server(s), along with Operating System, OS version(s) and OS release(s) supported. | Must Have | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 3 | Acceptable |
| T091 | The Vendor will propose both minimum and optimal specifications for the servers (if applicable), client workstations, and mobile computing devices. This equipment will have the capacity to run the proposed | List the minimum AND optimal recommended specifications for servers (if applicable), client workstations and/or mobile devices to run the application. Include | Expected | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 3 | Acceptable |

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| | application, perform data analysis, and querying. | estimates for server and database storage requirements based on similarly sized municipalities. | | | | |
| T092 | The Customer will be able to accurately plan for storage and backup requirements, both for initial implementation and for future growth. | Provide capacity estimates (in terms of GB of storage) for the proposed system on-line storage and data archives. | Expected | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.7 | Acceptable |
| T093 | The solution will be supported in a virtual server environment based on VMWare Infrastructure 3. | Describe your support for running the application software on VMWare or other virtual server environments. | Expected | Base Functionality | We support Virtual Environment s See CCH TeamMate Suite IT Overview Document - Section 3 | Acceptable |
| T094 | The proposed solution will be capable of being fully restored in the event of catastrophic server failures. | Describe the data and application backup and recovery plan including automatic and unattended backups, expected data loss from recovery, backups in a separate facility from the production system, and allowances for full or partial recovery. | Must Have | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.7 | Acceptable |
| T095 | If the proposed solution includes fail-over, the fail-over event will be completely automated. | Describe how the system performs automatic fail-over between redundant systems in the event of system failure for both the application and the | Desired | Not Available | Fail Over is not supported | Functionality Not Required |

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| | | database. | | | | |
| T096 | The RDBMS used by the solution (if applicable) will support transaction logs and allow a data restore from transaction logs. | Explain how the solution's RDBMS supports transaction logs and allows for a data restore from those logs. | Expected | Base Functionality | We use Microsoft's best practices for SQL Server | Acceptable |
| T097 | The system will include a backup and recovery plan for data, data structures, application software files, executables, and application software utilities. The plan will include a backup and recovery test plan. | Describe the backup and recovery plan. It will address automatic and unattended backups, expected data loss, backups in a separate facility from the production system, emergency notification procedures, and procedures for full or partial recovery. | Expected | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.7 | Acceptable |
| T098 | If the solution uses relational database management technology, it will be capable of supporting high availability and resiliency. | Describe how the solution RDBMS can provide availability and resiliency through the use of such technologies as mirror imaging, portability, and replication. | Expected | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 3 | Acceptable |
| T099 | The software environment will be capable of dynamically accepting changes to network configurations with little or no impact on solution availability (i.e. installing additional servers/workstations and changing the IP or subnet of any of the servers). | Describe how the solution is capable of dynamically accepting changes to network configurations with no impact on solution availability (i.e. Changing the IP or subnet of any of the servers will not affect operation). | Expected | Base Functionality | We support IP and DNS - We support Microsoft's best practices in this matter. | Acceptable |

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| T100 | if the proposed solution provides high availability (HA) level of service, specify the HA components required (such as Oracle RAC or Data Guard), and indicate if such components are included in the proposal. | List the HA components (if applicable) required, and specify whether the components are included in the proposal or are to be provided by the City. | Must Have | Not Available | | Functionality Not Required |
| T101 | The solution will use a widely-accepted and well-supported DBMS such as Oracle 10g (or higher) or MS SQL 2000 SP3. | Describe the database system(s) and version numbers supported by the solution. (Oracle systems with processor-level licensing are preferred but MS SQL is accepted.) | Must Have | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 3 | Acceptable |
| T102 | The Vendor will provide recommendations for tuning parameters for all databases. | Provide recommendations for tuning parameters for all databases. Explain the reasoning for these recommendations. | Expected | Not Available | | Functionality Not Required |
| T103 | If the proposed solution uses an RDBMS system other than Oracle 10g (or higher) or MS SQL 2000 SP3 (or higher), the RDBMS will support two phase commit procedures. | Explain how the RDBMS used by the solution supports two phase commit procedures. | Expected | Not Available | We can only write to one DB at a time. We are transaction based. A Cluster would work. | Functionality Not Required |
| T104 | If the proposed solution includes a relational database management system other than Oracle or MS SQL, the RDBMS will be ACID compliant. | Provide evidence that the proposed RDBMS is ACID compliant. | Expected | Not Available | | Functionality Not Required |
| T105 | The proposed solution will support Service Oriented Architecture. | Describe how the proposed system supports SOA, and specify what | Expected | Not Available | | Functionality Not Required |

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| | | SOA services and platforms are supported. | | | | |
| T106 | If the proposed solution uses Oracle DBMS, and is client-server architecture, specify the required number of Oracle client licenses. | Specify the required number of Oracle client licenses, and indicate if the licenses are included in the cost proposal. | Must Have | Not Available | | Functionality Not Required |
| T107 | The solution will be able to run in a VLAN environment. | Describe how the solution runs in a VLAN environment. Note any limitations of running the solution in a VLAN environment. | Expected | Base Functionality | As long as the requirement s are met in the CCH TeamMate Suite IT Overview, then a VLAN will work. | Acceptable |
| T108 | The system components will be capable of using SNMP (V3) to report system metrics via the network. | Explain how the system uses SNMP V3. Describe which hardware and software components of solution (provided by Vendor) are SNMP V3 capable. | Desired | Not Available | | Functionality Not Required |
| T109 | The solution will be able to run in an environment that uses 100/1000MB full duplex connections for back-end systems. | Describe how the solution runs in an environment that uses 100/1000MB full duplex connections for back-end systems. | Must Have | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 3 | Acceptable |
| T110 | If the proposed solution includes electronic hardware such as servers or network devices, all network-enabled hardware will support auto-negotiation of network speeds and duplex settings, including 10 mbps, 100 mpbs and Gigabit Ethernet, if | Provide specifications on network interfaces of all network-enabled devices proposed. | Must Have | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 3 | Acceptable |

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| T111 | Application servers will NOT require Layer 2 adjacency. | Explain any limitations relating to Layer 2 adjacency requirements for the proposed application. Can all application server components be separated on different network segments or subnetworks? | Must Have | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 2 & 3 | Acceptable | • |
| T112 | The proposed application will NOT require static network routes. | Explain how inter-network communications are supported in the application without the need for statically assigned routes. | Must Have | Base Functionality | We support DNS | Acceptable | |
| T113 | The proposed solution will be compatible with, and easily supported on the Customer's native network infrastructure. | Provide documentation of application/data traffic including protocols and ports. List the ports and protocols used for data communication between each tier of the application. Note any exceptional aspects of the application communication architecture. | Expected | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.1 | Acceptable | |
| T114 | The proposed solution will not require broadcast messaging for normal operation. | If the application will use broadcast messaging, describe the purpose and functionality of broadcasting. | Must Have | Base Functionality | We do not require broadcasting | Acceptable | |

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| T115 | The proposed solution will be capable of operating over routed subnetworks (does not require components to be co-located on the same subnetwork). | Explain how the proposed solution components can communicate with each other when separated on different subnetworks. | Expected | Base Functionality | DNS | Acceptable |
| T116 | The solution will be capable of providing a current copy of the production data that allows system users to perform queries, perform data mining and produce reports on servers other than the production servers. | Describe the data archiving solution that allows system users to perform queries and produce reports on servers other than the production servers. | Expected | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.2.9 | Acceptable |
| T117 | The solution will provide RADIUS, LDAP, or MS Active Directory authentication to provide authentication to the application software. | Describe what authentication methods are supported by the application software. | Expected | Base Functionality | See CCH TeamMate Suite IT Overview Document - Section 6.9 | Acceptable |
| T118 | If the solution includes a firewall, it will not use an application-layer proxy firewall. The solution will use a stateful-inspection firewall instead. | Confirm that the solution does not use an application layer firewall. | Must Have | Not Available | | Functionality Not Required |
| T119 | All Windows-based solutions deployed on both client workstations and servers will be compatible with Trend Micro Anti-Virus, KACE KBOX, and SMS for servers and workstations. | Describe how the application is tested and validated as being compatible with the Trend Micro Anti-Virus application and SMS. | Expected | Not Available | | Functionality Not Required |
| T120 | System directories affected by Customer-installed system-hardening software will be easily identifiable by Security Administrators so they will know which directories to lock. | List all directories affected by system-hardening software. If the City installs system-hardening software on the system, Security | Expected | Not Available | This will vary - we need to allow the users to write to the registry and also read and execute from the program files / teammate | Functionality Not Required |

| | | Administrators need to know which directories to lock. | | | on the local machine. | |
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The System shall meet or exceed all of the following Functional Requirements. The following requirements are for "All Solutions" and Application Software.

| Req # | Requirement Description | Required Response | Rating | Vendor Response | Vendor Response Description | City Response |
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| F001 | The system will collect and maintain audit outputs so that project files can be immutably archived in electronic format. | Detail how audit projects are created and how outputs are compiled electronically and archived for immutable record retention purposes. | Must Have | Base Functionality | Projects are created from the Suite db or as a new project using a customized template which standardizes the terms, categories and policies of your methodology. Projects are archived indefinitely until client deletes them. | Acceptable |
| F002 | The system will attach and export Microsoft Office, Adobe, HTML, jpeg, tif, and other picture file, scanned, and hardcopy documents. | Describe how the system attaches and exports documents using standard document formats (doc, pdf, xls, ppt, jpg, gif, etc) and its ability to scan and store hardcopy documents. | Must Have | Base Functionality | TM can attach any form of document (MS Office, scanned, PDF, Visio, HTML, digital pictures) directly to a step and is embedded in the audit. TeamImage (scanning) is part of the TM application install. Documents are exported directly from TeamMate. | Acceptable |
| F003 | The system will attach, store, and archive audio and video files. | Describe the system's capabilities for immutably preserving and attaching audio and video files. | Desired | Base Functionality | TeamMate will attach, store and archive any form of file (TIF, jpeg, audio or video). Documents remain embedded in the audit and launched via the audit when selected. No special equipment or application needed. | Acceptable |
| F004 | The system will be able to import and export working papers, reports and templates, and other documents in multiple file formats that may be customized by OCA or adapted from other professional audit sources. | Explain how the system imports and exports outputs in multiple file formats and uses standard and custom templates. Describe the templates available, how they may be created ad-hoc or customized by OCA, or adapted from other audit sources. | Must Have | Base Functionality | TeamMate accepts the import of any form of template. Clients will continue to use their own current templates and forms within TM. These forms can be attached (imported) directly to a procedure step or stored in the TeamStore for future use. | Acceptable |

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| F005 | The system will allow users to track status and progress on (in progress versus completed) items throughout the audit process and produce various management reports to assist in analyzing project status. | Describe how status and progress on items are tracked and reported. Provide examples of management reports in your proposal. | Must Have | Base Functionality | TM tracks status and progress of audit procedures, workpapers, issues and comments via visual indicators to show in progress, prepared, reviewed or edited since review. Issues are tracked in TeamCentral to show pending, implemented or closed status. | Acceptable |
| F006 | The system will provide an audit trail of immutable login and logoff information for each auditor accessing the project files. | Explain how the system captures audit team access activity and maintains a history of such changes. | Must Have | Base Functionality | TM maintains a complete edit and sign off history of edits, prepares and reviews via automated electronic signatures on all procedure steps, issues and workpapers. | Acceptable |
| F007 | The system will allow users to make and view comments and review notes on documents throughout audit process, maintain the history of such feedback. | Describe how comments and notes are viewed and how supervisors and managers can review work products, document feedback, and print reports to facilitate performance feedback to subordinates. Provides examples of reports in your proposal. | Must Have | Base Functionality | Review notes have ability to be anchored in the exact location of the directive. Reviewers can navigate directly to items ready for review without searching. Reports, both custom and standard, can be generated for any information contained in the audit. | Acceptable |
| F008 | The system will allow for audit programs to be created in a concise, consistent, and logical manner and accommodate multiple audit objectives to ensure efficient performance of audit tasks. | Demonstrate that the standard workflow(s) related to performing an audit from start to finish can be organized in a logical, efficient manner to accommodate multiple audit objectives. | Must Have | Base Functionality | System allows for programs based on the client's methodology. Programs can be imported in from the TeamStore to increase efficiency or added directly to an audit. Steps are in a concise and consistent manner to accommodate multiple audit objectives. | Acceptable |

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| F009 | The system will automatically assign unique numbering and indexing of audit documents, including audit procedures/tasks, exceptions and findings, and other outputs. | Describe how documents are automatically numbered in a sequential manner to facilitate review and tracking of routine audit outputs. | Must Have | Base Functionality | TeamMate automatically number programs, workpapers and issues in the form of ARC (Audit Reference Code) in a sequential manner per audit folder. Links reflect the ARC to facility review and tracking of audit outputs. | Acceptable |
| F010 | The system will provide a record and audit trail for user name and timestamps for comments, edits, changes to work papers, reviews, approvals, feedback, and preparation, as well as maintain a change log. | Describe how user name, activity, and changes are tracked and recorded throughout the audit process, how this information is accessed and viewed, and if it is immutable. | Must Have | Base Functionality | System provides audit trail signoffs for work performed on steps, workpapers and issues noting status performed, name and timestamps for edits, prepares and reviews. Audit trail dates and times cannot be deleted. | Acceptable |
| F011 | The system will allow users to create field naming conventions, interface with other automated systems such as ERP, CRP, CAC, and import documents from key infrastructure systems such as accounting, human resources, payroll, time keeping, etc. | Describe how users can interact with the system relating to the specifics of this requirement. | Desired | Base Functionality | TeamMate allows for import of client terminology and naming conventions to reflect client methodology. Any document from other systems can be imported into TeamMate and hyperlinked to a specific location (step, workpaper, etc). | Acceptable |
| F012 | The system will allow users to add, export or remove files and folders as necessary to meet audit needs prior to closing the audit work paper file. After closing, the file will remain immutable. | Explain the process of adding, exporting, and removing files and folders and how records remain immutable. | Must Have | Base Functionality | System allows for the adding, exporting and removing of files during the course of the audit. Once an audit is complete, one can finalize the audit which locks the audit for any future editing in a read only format. | Acceptable |

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| F013 | The system will allow for different levels of access to project files based upon audit team assignments and project roles and responsibilities for up to 30 concurrent users with an ability to add additional users as needs change. | Explain the system's capabilities for creating levels of access to project files and how restrictions may be applied to various audit roles (administrator, team member, supervisor, manager, and guest/read-only access). | Desired | Base Functionality | TM contains 5 roles that are project specific (read only, preparer only, reviewer only, preparer/reviewer, and admin). Each role has unique responsibilities limited specific actions by the team member. Users can be added at any time to a project. | Acceptable |
| F014 | The system will allow for limited access to projects when reviewed by external third parties (peer review) or by staff not assigned an active role on the project (i.e. prepares, modifies, reviews, reads, closes). | Explain the system's capability for allowing limited access to projects by staff or other personnel not assigned an active role on the project. | Must Have | Base Functionality | External third parties and other non-assigned personnel can have limited access to audits via read only role. Replication can also be used to further limit accessibility to specific programs and workpapers. | Acceptable |
| F015 | The system will permit audit teams to work on or off a network to accommodate onsite and offsite work environments. | Explain how the system permit audit teams to work on or off a network to accommodate onsite and offsite work environments. | Must Have | Base Functionality | TeamMate employs a replication engine which allows non-network accessibility when working off-line in offsite locations. Replication synchronization allows for 2-way updates without having to merge and create a new replica to update the master file. | Acceptable |
| F016 | The system will permit audit teams to work on or off the Internet or City connections. | Explain how the system will permit audit teams to work on or off the Internet or City connections. | Must Have | Base Functionality | Certain modules (TeamCentral, TEC, TeamRisk web and TeamSchedule ) are web based. Other modules are client based using the centralized SQL or Oracle database for VPN connection to the city network reducing the need for replication when working offsite | Acceptable |

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| F017 | The system will allow business continuity and disaster recovery through automatic back up and recovery protocols. | Demonstrate the system's ability to ensure business continuity and disaster recovery. | Must Have | Base Functionality | Backup of the SQL or Oracle db is provided by City System IT administrative functionality | Acceptable |
| F018 | The system will prevent multiple users from accessing and editing the same document at the same time. | Demonstrate the system's capability to preserve data integrity by restricting use of the same document at the same time as another user. | Must Have | Base Functionality | No two people can be in the same document or audit step at the same time. First one receives edit rights. Subsequent access is read only. | Acceptable |
| F019 | The system will preserve data integrity by ensuring imported documents do not overwrite or replace current documents. | Demonstrate the system's ability to preserve data integrity over imported documents and files. | Must Have | Base Functionality | Any document imported will be assigned the next available ARC link unless specifically noted to replace an existing document. Sufficient notification will be requested of the auditor prior to replacing an existing document. | Acceptable |
| F020 | The system will track and analyze findings, exceptions and allow for the exporting of audit procedures and summary reports related to comments, feedback, findings, project status, and audit procedure status. | Describe the system's ability to track and analyze audit findings and exceptions, create summary reports specific to each step in the audit process, and allow for the exporting of such documents. Include examples of reports in your proposal. | Must Have | Base Functionality | At audit level TM has ability to create client customized issue and procedure audit reports. TeamCentral provides the ability to filter and sort across all audit issues and profile information or status updates. TC reports can be exported to excel / pdf. | Acceptable |
| F021 | The system will have hyper linking, or other electronic methodology, to cross reference between source documents, audit plans, and other files stored within and outside the solution. | Explain how the system allows for hyper linking or other electronic methodology for referencing source documents not stored within the solution. | Must Have | Base Functionality | TM provides one and two-way hyperlinking on issues, coaching notes, workpapers and audit steps within the audit. Links to websites as well as network files can be created within EWP procedure steps. | Acceptable |

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| F022 | The system will be capable of accessing project files and documents in a wireless environment. | Explain how the system allows users to access project files in a wireless environment and ensures the same level of functionality and stability. | Desired | Base Functionality | TeamMate can access projects via VPN wireless connections to the city's network. | Acceptable |
| F023 | The system will perform batch sign-offs and/or mass approvals. | Explain how the system allows for batch sign-off of multiple work files. | Desired | Base Functionality | TeamMate can provide batch sign-offs and/or mass approvals on procedure steps as well as workpapers. | Acceptable |
| F024 | The system will identify documents awaiting review, and review completed. | Explain how the system identifies documents awaiting review and review completed. | Must Have | Base Functionality | Snapshot and other various standard viewers quickly note documents as well as procedure steps awaiting review and completed reviews. Navigation to these selected items can be provided directly via the TeamMate Snapshot. | Acceptable |
| F025 | The system will allow for indexing such that users can search the project files for documents, including archived projects and audit work within those projects by date, name, topic, type. | Describe the system's ability to conduct word and/or document searches and how it allows for searching through past audit projects, including work completed within each project. | Must Have | Base Functionality | TeamCentral can provide filter and sort capabilities across all project profile information (type, name, code, dates etc). Within EWP, searches of document titles only but can conduct searches of words via any TeamMate schedule (programs and issues). | Acceptable |
| F026 | The system will notify reviewers that a document has been edited post review. | Describe the system's ability to notify reviewers of documents that may have been edited after final review is complete and preserve the integrity of audit work products. | Must Have | Base Functionality | System will indicate "edited post review" by displaying a red flag indicator if the issue, procedure step or document has been modified by someone other than the reviewer after that item has been signed off as reviewed. | Acceptable |
| F027 | The system will be able to reference industry standards, best practices, and other policies and procedures within a library to ensure audit teams are in compliance. | Describe the system's ability to reference industry standards, best practices, and other policies and procedures within a library to ensure audit teams are in compliance. | Must Have | Base Functionality | TeamStore can be built to reflect a global repository of industry standards, best practices and other policies/procedures for import into an audit. A template to start an audit can contain this type of information as well to reflect client methodology. | Acceptable |

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| F028 | The system will include a library within which audit programs, work paper templates, audit report formats, and other outputs frequently used on audits can be stored, accessed, and used from audit to audit. | Describe the system's ability to maintain a centralized location for accessing work products frequently used on all audits. | Must Have | Base Functionality | The TeamStore is a global repository for frequently used procedure steps, associated templates (workpapers) which can be tied to the procedure step as well as a generic library of issues for documentation of findings. | Acceptable |
| F029 | The system will allow administrators to finalize work files to immutably archive and prevent further modification. | Describe how user finalize work files for archival purposes and how further modification of records is prevented. | Must Have | Base Functionality | Administrators can finalize an audit upon completion at which time all work is set to read only to prevent further modification. | Acceptable |
| F030 | The system will provide a mechanism of notification when comments, feedback, or other form of review note is awaiting a response. | Describe how the system allows for work paper, audit steps and procedures to be reviewed and how feedback, comments, and review notes are provided to team members. | Must Have | Base Functionality | TM allows provides ability to anchor a Coaching note to a specific location (procedure, workpaper and issue) for review reference purposes. Personal snapshot viewer allows auditor to quickly navigate to all their outstanding review notes. | Acceptable |
| F031 | The system will track audit issues, recommendations, and produce reports to facilitate analysis of audit results and management responses to the results. | Describe how audit issues and recommendations are tracked, and include samples of the type of summary reports available in your proposal. | Must Have | Base Functionality | TeamCentral allows the ability to filter and sort across all audits and issues as well as providing implementation tracking status follow-up by the process owner. Standard status reports are provided for audit management review. | Acceptable |

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| F032 | The system will incorporate risk and integrate results with current, present, or future audit projects, and provide reports that summarize and track risk assessments. Risk assessment will be performed in accordance with Government Auditing Standards, Inst | Explain how risk assessments are created in accordance with audit standards, and how results are used before, during and after the audit process. Include samples of the reports generated to summarize and track risk in your proposal. | Must Have | Base Functionality | TeamRisk reflects risks / controls associated with a process. Those risks and controls are depicted in the created project. Risks and controls can also be added within the project. TC can produce risk and control reports across audits. | Acceptable |
| F033 | The system will be capable of documenting, storing, and preparing Annual Audit Plans based upon risk results accumulated through OCA risk assessment processes. | Describe how the system can use risk results to prepare and implement Annual Audit Plans, but also track issues that may be selected or targeted for future audit plans. | Must Have | Base Functionality | TeamRisk can produce a means to create a risk assessment annual audit plan based upon the numerical average inherent and residual risk scores as accumulated through the risk assessment process. | Acceptable |
| F034 | The system will have built-in risk assessment modules, but also allow for the customization of risk categories, risk scoring, and overall risk evaluation. | Describe the risk modules within the system and how they assist users evaluate risk. What inputs are required by the user and what features may be customized by OCA. | Must Have | Base Functionality | TeamRisk as with all TeamMate modules can be configured to reflect the client's risk assessment methodology both in terminology, audit universe, variables, scoring and risk /control properties. | Acceptable |
| F035 | The system will allow for users to create new risk assessments for users within the audit office, as well as self-assessments that may be provided to auditees within the various City Departments. | Describe the tools available for assessing risk and assisting other City departments assess risk. Demonstrate how auditor risk conclusions can be combined with input from auditees to develop an overall conclusion regarding risk within the organization. | Must Have | Base Functionality | TeamRisk allows the creation of new risk assessments on the client as well as CSA (Control Self Assessment) templates for process owners to evaluate departmental risks. Those Reponses can be imported directly into the client for analysis. | Acceptable |

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| F036 | The system will incorporate staff scheduling, knowledge, skills, and abilities in order to maximize resources and ensure projects are assigned to personnel with the appropriate competency. | Describe how the AWP integrates auditor availability and knowledge, skills, and abilities, when assigning competent staff and maximizing resources. | Must Have | Base Functionality | TeamSchedule allows the client to assign resources to a project based on the competence of the resource. Selection can be based on resource ie skill, experience, credentials and language. Projects can also be set to require specific resource skills. | Acceptable |
| F037 | The system will ensure that all audit team members can view the audit schedule, but only designated users can develop, assign, and communicate audit schedules and assignments. | Provide an overview of the schedule creation process and how designated staff assigns resources to projects. Include a description of how auditors can view their assignments. | Must Have | Base Functionality | Only those designed with access to the client via TeamAdmin (ie schedulers) can schedule resources. Resources can access their schedules via the web. The web does not allow project scheduling but resources can schedule non-working events. | Acceptable |
| F038 | The system will distinguish between an audit project schedule and an individual team member's schedule. | Describe how the system presents project start and end dates versus audit team assignments, identifies potential scheduling gaps, or under-utilized resources. | Must Have | Base Functionality | TeamSchedule contains a project gantt chart depicting project start - end dates as well as resources assigned. Other gantt charts depict scheduling gaps. Numerous reports including resource utilization reports are included in TeamSchedule. | Acceptable |
| F039 | The system will track phases of the audit process (planning, fieldwork, reporting, close out) and track key milestones (kick off, end of planning, end of fieldwork, draft report, management responses due, etc). | Describe how the system tracks audit phases, key target dates, and deliverables within individual audit projects, including how milestones and target dates can be modified as project needs change. | Must Have | Base Functionality | TeamMate EWP tracks audit phases as well as milestones within the individual projects. These milestones and target dates are then reflected and traced in TeamCentral for overall reporting. These milestones and dates can be modified as project changes. | Acceptable |

# EXHIBIT D
## Support Agreement


### TEAMMATE® GLOBAL LICENSE, SUPPORT AND SERVICES AGREEMENT

**IMPORTANT NOTICE: PLEASE READ THIS GLOBAL LICENSE, SUPPORT AND SERVICES AGREEMENT (THIS "AGREEMENT") CAREFULLY BEFORE INSTALLING, DOWNLOADING, COPYING OR USING ANY TEAMMATE® SOFTWARE. THIS AGREEMENT IS A LEGAL AGREEMENT BETWEEN THE COMPANY, ORGANIZATION OR OTHER PERSON OR ENTITY THAT HAS LICENSED THIS SOFTWARE ("CUSTOMER") AND LICENSOR (AS DEFINED BELOW). IT HAS THE SAME EFFECT AS ANY NEGOTIATED WRITTEN AGREEMENT SIGNED BY CUSTOMER AND GOVERNS PERMITTED ACCESS TO AND INSTALLATION, COPYING AND USE OF THE SOFTWARE BY CUSTOMER AND ANY USERS. BY CLICKING TO ACKNOWLEDGE AND AGREE TO THIS AGREEMENT, OR BY INSTALLING, DOWNLOADING, OR USING THE SOFTWARE, CUSTOMER ACCEPTS AND AGREES TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY, OR DO NOT HAVE AUTHORITY TO BIND CUSTOMER TO, THESE TERMS AND CONDITIONS, THEN DO NOT INSTALL, DOWNLOAD OR USE THE SOFTWARE.**

**THIS AGREEMENT MAY REFER TO AND INCORPORATE SUPPLEMENTAL TERMS SET FORTH IN ONE OR MORE ORDER FORMS (AS DEFINED BELOW). IN ADDITION, CUSTOMER'S RIGHTS UNDER THIS AGREEMENT MAY BE SUBJECT TO ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS IN A SEPARATE WRITTEN LICENSE AND SERVICES AGREEMENT WHICH MAY SUPERSEDE ALL OR PORTIONS OF THIS AGREEMENT, AS AND TO THE EXTENT EXPRESSLY PROVIDED THEREIN. TO THE EXTENT A CUSTOMER HAS PREVIOUSLY ENTERED INTO A SEPARATE LICENSE AGREEMENT FOR THE LICENSED PRODUCTS AND ANY SUCH TERMS CONFLICT WITH THE TERMS HEREUNDER, THE TERMS OF THAT PARTICULAR OTHER PRE-EXISTING LICENSE AGREEMENT(S) SHALL GOVERN IN THE EVENT OF CONFLICT.**


### Section 1. Selected Definitions

1.1 "Affiliate" means with respect to Customer, any corporation, partnership, firm, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, governmental organization or body that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with Customer, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, organization or body, whether through ownership of voting securities or otherwise.

1.2 "Content" means informational content, such as operational risk listings or categories, sample report templates or illustrative databases, contained in the Software or supplied by or on behalf of Licensor to Customer with the Software.

1.3 "Documentation" means any operating manuals, user instructions, technical specifications or similar publications relating to the Use and administration of the Software by Licensor customers that are supplied with or contained in the Software provided to Customer by or on behalf of Licensor.

1.4 "Effective Date" means the earlier of (a) the date so designated in the Order Form, or (b) the date Customer first downloads or receives delivery of the Software.

1.5 "Initial Fees" means all license fees payable for license of the Software, together with all fees for any related Services (to the extent such fees are to be paid up front pursuant to the Order Form) and for the initial Support term, in each case as shown on the applicable Software Order Form.

1.6 "Intellectual Property Rights" means all rights, title and interests in and to the Licensed Products, including, without limitation, all copyright, patent, trade secret, trademark and other intellectual property and proprietary and moral rights related thereto, and these and any other similar rights in any jurisdiction relating to the Licensed Product.

1.7 "Licensed Products" means the Software, any Content (whether included in the Software or separately provided), the Documentation and the Media.

1.8 "Licensor" means Wolters Kluwer Financial Services, Inc. or any non-United States affiliated company that is named as the "licensor" or "services provider" in any Order Form or written license and/or services agreement with Customer.

1.9 "Media" means the physical media on which the Software and Documentation are recorded or printed, as provided by Licensor to Customer.

1.10 "Order Form" means Licensor's then current order form for Software or its then current Services, all of which refer to and are governed by this Agreement, completed and signed by Customer and Licensor.

1.11 "Services" means the services (other than Support) provided by Licensor under this Agreement, as requested by Customer, accepted by Licensor and described in one or more Order Forms.

1.12 "Software" means (a) the TeamMate® electronic audit management software suite only in machine readable, executable (object code) format, including the features, functions, designs and any Content included therein, (b) any Updates or Versions that may be provided by or on behalf of Licensor to Customer during the applicable Support Period, and (c) any complete or partial copies thereof permitted to be made by this Agreement.

1.13 "Support" means Licensor's then current support and maintenance services program for the Software, as further described in Section 8.

1.14 "Support Period" means the period during which Licensor provides support services under the terms of this Agreement and as set out in the Order Form, for which Customer has paid the applicable fee(s).

1.15 "Update" means any updates, enhancements, improvements, corrections, service packs or other modifications of or to the Software that are released by Licensor for general distribution to Software licensees as a part of Support during the period for which Customer has purchased Support, but which are not new major Versions. An Update is generally denoted by Licensor by a change to the right of the first decimal point in the Software version number (for example, Version 1.0 to 1.1).

1.16 "Use" or "Using" means (a) to install, load, download, execute, access, utilize, display or store the Software or information therein, or interact with its functionality or processing capabilities in accordance with the terms of this Agreement, and (b) to read, process and utilize the Documentation and process the Media in connection with Use of the Software in accordance with the terms of this Agreement.

1.17 "User" means each individual employee of Customer or its authorized agents or subcontractors who Uses the Licensed Products as operated or made available by or through Customer, regardless of whether such individual is actively Using the Software at any given time.

1.18 "Version" means any new version or upgrade of the Software that contains substantial and significant enhancements, or other substantial changes in functionality or performance as compared to the previous version (if any) and which is designated by a numeric change to left of the decimal (e.g., Version 8.0 and 9.0).

Section 2. License Grant

2.1 General. Effective upon Customer's payment of the Initial Fees, Licensor hereby grants to Customer a non-exclusive, perpetual and non-transferable license to Use the Licensed Products, on and subject to the terms and conditions of this Agreement. Licensor reserves all rights in and to the Licensed Products not expressly granted in this Agreement.

2.2 Internal Use Limitation. Customer may Use and permit its Users to Use the Licensed Products only for Customer's own internal business purposes. Other than Users authorized hereunder, Customer shall not permit any third party to Use the Licensed Products in any way whatsoever. Except as expressly authorized by Section 3 of this Agreement, Customer shall not, and shall not permit any User to, offer or Use the Licensed Products for the benefit of any affiliated or unaffiliated third parties, including in any computer service business, service bureau arrangement, outsourcing or subscription service, time sharing or other participation arrangement.

2.3 Number of Users. Customer shall not Use, or permit the Use of, any Licensed Products by more than the maximum number of Users specified in the applicable Order Form (as the same may be adjusted pursuant to an Order Form amendment or supplement or Sections 3.3 and 4.4 hereof), whether or not such Users are actively Using the Licensed Products at the same time.

2.4 Copies. Customer may make a reasonable number of back-up copies of the Software for Customer's archival or disaster recovery purposes only and not for production, development, evaluation or testing purposes (other than to ensure that such back-up copies are capable of replacing the Software in case of a disaster). Such copies shall be the property of Licensor and Customer shall not remove from, deface or overprint on the original Software any Licensor copyright notices, trademarks, logos, legends or other similar proprietary designations, and shall accurately reproduce all of the same on any permitted copies. Customer shall keep exclusive possession of and control over the copies of the Licensed Product in its possession and shall effect and maintain adequate security measures to safeguard the Licensed Product from access or Use by any unauthorized person or person who is not an authorized User hereunder.

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**Section 3. Limited Third Party Use of Licensed Products**

3.1 Affiliate Use. Any Customer Affiliate may Use the Licensed Products, provided that (a) such Customer Affiliate Uses the Licensed Products only for its own and/or Customer's internal business purposes strictly in accordance with all of the terms and conditions set forth in this Agreement (including, without limitation, Section 2.3 above), and (b) Customer Affiliate agrees to comply with and be bound by the terms of this Agreement. Customer hereby agrees to be fully responsible and liable for each and every Customer Affiliates' (and its Users) full compliance with the terms and conditions of this Agreement, such that any breach of the terms of this Agreement by any such Affiliate (or its Users) shall be deemed a breach by Customer.

3.2 Use by Third Party Service Providers. Customer may permit Use of the Licensed Products by its third party service providers or consultants, including any third parties providing Customer with outsourcing, data center management or disaster recovery services ("Service Providers"), provided that such Service Providers (a) Use the Licensed Products only for Customer's internal business purposes and (b) agree to comply with and be bound by the terms of this Agreement. Customer hereby agrees to be fully responsible and liable for each and every Service Providers' (and its Users) full compliance with the terms and conditions of this Agreement, such that any breach of the terms of this Agreement by any such Services Provider (or its Users) shall be deemed a breach by the Customer.

3.3 User Count and License Fee Adjustments. Any individuals afforded rights to Use the Licensed Products pursuant to Sections 3.1 or 3.2 shall be counted as Users for all purposes under this Agreement. Customer shall advise Licensor promptly upon any increase in the total number of Users as a result of any such Affiliate or Service Provider Use and shall pay to Licensor any required additional License fees at Licensor's then current applicable rates. No such adjustments shall be required for any incidental access to information in, from or generated by the Software required or requested by any external financial auditor of Customer or any Affiliate, or any representative of any governmental, accreditation or regulatory body in the course of their normal regulatory, investigative or professional duties for or with respect to Customer or any Affiliate.

**Section 4. Unauthorized Use of Licensed Products**

4.1 No Modification or Reverse Engineering. Customer shall not, and shall not allow any User, Affiliate or Service Provider to, (a) modify, port, adapt or translate or create any derivative works from or based on the Licensed Products, in whole or in part, (b) reverse engineer, decompile, disassemble or otherwise attempt to reduce the object code to or discover the source code of the Software, or (c) combine or merge the Software with, or incorporate it into, any other software. This prohibition shall not apply to the extent that applicable law affords Customer the right to decompile the Software if and as necessary to render it interoperable with other software licensed or used by Customer, provided that Customer first requests such interoperability information from Licensor and complies with any reasonable conditions, including payment of any reasonable fees and expenses then generally charged by Licensor to its customers for the same. Customer's Use of the Software to process Customer information or tasks and produce activity lists, schedules or reports which the Software enables and for which it is intended will not be deemed to constitute creation of derivative works or violations of this Section 4.1.

4.2 No Transfer or Assignment. Except as may be otherwise expressly provided in Section 3, Customer shall not (a) sublicense, assign or transfer the Software in whole or in part to any third party, or (b) assign or transfer to any third party any of Customer's rights or interests in and to the Software, including through any lease, rental, subscription, lending, pledge, security interest or shared participation arrangement with or in favor of any third party.

4.3 Additional Customer Responsibilities. Customer shall maintain, and promptly provide to Licensor upon its request, accurate User lists and other reasonably detailed records regarding Use of the Software by or for Customer. If Customer becomes aware of any unauthorized Use of all or any part of the Licensed Products, Customer shall notify Licensor promptly, providing reasonable details. Customer will remain responsible for any unauthorized Use of the Licensed Products by any individuals employed by, acting as authorized agents of or performing services for Customer or it Affiliates (including any of their respective service providers).

4.4 Verification Rights. Upon reasonable prior notice to Customer not more than once every twelve (12) months, Licensor may conduct an audit, using its own or third party personnel, to review that Customer's Use of the Licensed Products complies with this Agreement, including the number of licensed Users under this Agreement and the applicable Order Form(s). Licensor will conduct any such audit during Customer's normal business hours and in accordance with Customer's reasonable site security requirements. If any such audit or any other Customer-provided information reveals that Customer has underpaid any license or Support fees, then as a non-exclusive remedy, Licensor may invoice Customer for, and Customer will pay, such additional fees as are thereby determined to be payable, based on Licensor's then effective list prices. If such underpayment exceeds five percent (5%) of the total fees paid *or due and payable* by Customer under this Agreement, Customer also shall reimburse Licensor for its reasonable costs actually incurred in conducting the verification.

### Section 5. Proprietary Rights

5.1 <u>Ownership of Licensed Products.</u> Customer acknowledges that Licensor is and will remain the sole and exclusive owner of all Intellectual Property Rights. Customer shall have no rights, title or interest therein or thereto, other than the limited license expressly set forth in this Agreement.

5.2. <u>Ownership of Customer Data.</u> Nothing in this Agreement shall be construed as granting Licensor any right, title or interest in or to any Customer-provided data or other content or information input into or processed using the Licensed Products.

5.3 <u>Ownership of Other Materials.</u> Licensor shall be the exclusive owner of all rights, title and interests, including all Intellectual Property Rights, in and to (i) the Licensed Products, (ii) any and all translations, adaptations, developments, enhancements, improvements, Updates, Versions, customizations or other modifications or derivations of or to the Licensed Products, whether or not developed by or for the Customer, and (iii) any suggestions, ideas, enhancement requests, feedback, or recommendations provided by or on behalf of Customer. In providing any customized report template or other customized work product deliverables in connection with its provision of Services hereunder, Licensor does not and shall not be deemed to transfer to Customer any Intellectual Property Rights therein, whether as "work-for-hire" or otherwise, other than the right to Use the same in accordance with this Agreement as part of the Licensed Products. Customer hereby assigns, grants and conveys to Licensor all rights, title and interests in and to any and all such materials, effective upon their creation or communication. Customer will execute and deliver to Licensor such further assignments and take all such further actions as Licensor may reasonably request to effect or evidence the assignment to and vesting in Licensor of all such rights.

5.4 <u>No Contest.</u> Neither Party shall pursue any claims contesting, make any filings or registrations inconsistent with or otherwise take any actions to challenge the respective intellectual property rights of the other Party as set forth in this <u>Section 5</u>.

### Section 6. Confidential Information

6.1 <u>Nature and Scope.</u> Customer's (i) financial and audit working papers and related documentation, and (ii) all data and other information identified as confidential by Customer, are confidential information of Customer. Customer agrees that the Licensed Products constitute trade secrets and confidential information of Licensor. "<u>Confidential Information</u>" includes any Licensor internal policies, procedures or third party audit or attestation reports and all information that is or reasonably should be understood to be confidential, proprietary, or generally not available to the public, whether furnished or made available before or after the date of this Agreement, and regardless of its form, format, media or mode of disclosure (written, visual, electronic or other).

6.2 <u>Obligations.</u> Each party will keep all Confidential Information of the other Party strictly confidential. Each party agrees to use the same care to protect the Confidential Information of the other as it employs with similar information of its own (but in no event less than reasonable care). Neither party will disclose any Confidential Information of the other party, except that each party may disclose Confidential Information of the other to its employees, subcontractors or agents who have a need to know such information, provided that, prior to such disclosure, the disclosing party requires that each such employee, subcontractor or agent agree to the restrictions on use and disclosure of Confidential Information set forth in this Agreement. The parties further agree that they will use Confidential Information solely for the purposes for which such information, or access to it, is provided pursuant to the terms of this Agreement. Upon any termination of this Agreement or otherwise promptly after the disclosing party's reasonable request, the receiving party shall either return to the disclosing party or destroy and certify in writing to such party the destruction of any and all Confidential Information of such party in the receiving party's possession. For the purpose of this <u>Section 6</u>, with respect to Customer, "party" shall include any Affiliate of Customer who has Users hereunder. In addition, Customer and its Affiliates (if applicable) shall be responsible for full compliance of any of their Service Providers' or Users' full compliance with the confidentiality obligations hereunder. These confidentiality obligations shall survive for a period of five (5) years after Customer's termination of Support of the Software.

6.3 <u>Exceptions.</u> Confidential Information shall not include information which is: (i) independently developed by the party without the benefit of the other's disclosure or is already known by the party at the time of disclosure; (ii) approved for release by the other's written authorization or is rightfully received by the party from a third party without any obligation of confidentiality; (iii) public knowledge without the wrongful act or breach of this Agreement by either party; or (iv) disclosed pursuant to the requirements of a governmental agency or court order.

### Section 7. Order, Delivery and Payment

7.1 <u>Order, Delivery, Installation.</u> Customer may order Software licenses, Support and/or Services by submitting one or more signed Order Forms to Licensor. After its acceptance of a Software Order Form, Licensor will either deliver the Software to Customer at the locations provided therein or permit the Customer to download the Software from an FTP site identified in

such Order Form. Customer will be responsible for installation of the Software, except to the extent Licensor agrees to provide such Services in accordance with Section 9 and pursuant to an Order Form. Acceptance will be deemed to occur on Customer's receipt or downloading of Licensed Products, Customer's order or renewal of Support or Licensor's performance of Services, as applicable. Licensor will bear all risk of loss for Licensed Products until their delivery to or downloading by Customer.

7.2 Payment and Taxes. All fees and expenses are quoted and invoiced in the currency specified in the applicable Order Form. All invoiced amounts are due and payable by Customer within thirty (30) days after the invoice date. Fees and other charges described in the applicable Order Form, do not include federal, state or local sales, foreign withholding, use, property, excise, service, value added or similar taxes ("Tax(es)") now or hereafter levied, all of which shall be for Customer's account. With respect to state/local sales tax, direct pay permits or a valid tax-exempt certificates must be provided to Licensor prior to the execution of this Agreement. If Licensor is required to pay Taxes, Customer shall reimburse Licensor for all such amounts. Customer hereby agrees to indemnify Licensor for any such Taxes and related costs, interest and penalties paid or payable by Licensor.

### Section 8. Support

8.1 Support Term and Fees. The initial term for Support of the Software will commence on the Effective Date and continue for such initial Support Period as shown on the applicable Order Form. Support will automatically renew for successive one (1) year renewal terms unless and until terminated as provided in Section 8.5. Unless otherwise provided in the Order Form, Support will be provided to Customer at no additional charge during the initial twelve (12)-month term following the Effective Date. Support fees for each successive Support renewal term are payable by Customer annually in advance. At the request of Licensor, Customer will provide Licensor with an update and/or confirmation of the number of Users of the Software and to the extent such number of Users has increased, Customer will pay Licensor such increased license fees and Support as required hereunder.

8.2 Licensor Support Obligations. Throughout the applicable Support Period, provided that Customer is not then in default of its obligations under this Agreement (including payment obligations) and subject to the exclusions set forth in Section 8.4, Licensor will provide or cause to be provided the following Support services: (a) telephone help-desk, and electronic and/or remote access support to assist Customer in its Use of the Software and respond to any reported failures of the Software to conform to Section 10.2 (provided that this support shall not be in lieu of obtaining training with respect to the Licensed Product, for which there is a Service charge); (b) provision of such Updates and Versions as Licensor from time to time produces and distributes generally to Software licensees under Support for no additional fees; and (c) such other support services as Licensor provides generally to licensees as part of its then current Software support and maintenance program.

8.3 Customer Responsibilities. Throughout the applicable Support Period, Customer will: (a) at its expense, maintain an approved, secure internet connection and such other compatible devices as needed to enable Licensor to gain remote access, with Customer's consent, to the computer system(s) on which the Software is installed for diagnostic, error notation and correction and other support purposes; (b) cooperate with Licensor in investigating and seeking to identify the cause of any claimed failure of the Software to perform in accordance with this Agreement; (c) allow such other remote and/or on-site access to the Software and to Customer's systems as may be reasonably required for Licensor to perform Support activities and (d) install all Updates and/or Version of the Software within at least eighteen (18) months of their release by Licensor. Licensor's obligation to provide the Support described in Section 8.2 above shall not apply to the extent Customer is not in full compliance with this Section 8.3. Customer acknowledges that the failure to timely install any Updates and/or Versions shall excuse Licensor's warranty and indemnity obligations herein, if and to the extent any performance or infringement issues thereby would have been avoided or mitigated by Customer's installation of such Updates and/or Versions.

8.4 Exclusions. Licensor Support will not include: (a) resolution of problems resulting from: (i) any modification of or damage to the Software or its operating environment, (ii) Customer's failure to operate the Software in an approved hardware and software environment or otherwise in accordance with applicable Licensor Documentation, or (iii) Customer's failure to implement any Updates provided by Licensor within the period of time required in Section 8.3(d); (b) new Versions of the Software for which Licensor establishes and generally charges Software licensees a separate license fee; (c) the provision of any Updates or other program Support described in Section 8.2, if Customer is in default with respect to payment of Support fees; or (d) Services, including but not limited to any installation, implementation and other Services.

8.5 Support Termination. Either party may terminate Support under this Agreement as of the end of the initial Support Period, or as of the end of any renewal term, by written notice to the other party at least ninety (90) days prior to the end of such applicable Support Period and/or renewal term. If Customer's license to use any of the Software is terminated for any reason, Support will terminate automatically as to such Software. If Licensor terminates Support in accordance with this Section 8.5, other than in the circumstance of a breach of this Agreement by Customer, Customer will be entitled to receive a pro-rata refund of any prepaid Support fees for any period beyond the termination effective date.

**Section 9. Services**

9.1 General. Licensor offers consulting services relating to the Licensed Products, including installation and implementation services, configuration or customization of templates or reports and training for Customer personnel. Licensor will provide (a) any required initial implementation Services, as provided in the Order Form for the Licensed Products, and (b) all other Services, at Customer's election and following Customer's signature and Licensor's acceptance of an Order Form describing the nature, scope, project assumptions, fees, duration, location(s) of the covered Services, in each case in accordance with and subject to the terms and conditions of this Agreement.

9.2 Services Performance; Customer Support. In performing Services, Licensor may assign Licensor personnel, authorized agents or qualified third-party contractors who are proficient in the provision of Services relating to the Licensed Products ("Consultants"). Licensor will be responsible for the observance by such Consultants of Licensor's obligations hereunder, including the confidentiality obligations in Section 6 herein. Customer agrees to provide the information, facilities, personnel and equipment, including if applicable suitably configured computers, reasonably identified by Licensor as essential to the performance of any Services. Customer may require Licensor's personnel in performing any Services to observe at all times the safety and security policies of Customer. Customer shall advise Licensor of any hazards to the health and safety of Licensor's personnel on the Customer's premises and provide Licensor's personnel with appropriate information regarding applicable safety and security procedures.

9.3 Services Pricing. Unless otherwise provided in the applicable Order Form, all Services shall be provided on a time and expense/materials basis at Licensor's then current rates. Licensor reserves the right to impose a higher rate for Services performed upon the request or with the approval of Customer in excess of a forty (40) hour week or during weekend or holiday periods. Estimates are provided for Customer's information only and are not guaranteed. Customer shall pay or reimburse Licensor for all reasonable travel and other out-of-pocket expenses incurred in connection with Licensor's performance of Services hereunder.

**Section 10. Limited Warranties and Disclaimers**

10.1 Authority. Each party represents to the other that such party has the full corporate power and authority to enter into and perform this Agreement.

10.2 Software and Media. Licensor warrants to Customer that, for a period of ninety (90) days from its delivery date, (a) the Software will perform substantially in accordance with the material functional specifications contained in the Documentation in effect at the time of delivery to Customer when such Software is properly installed and Used on the recommended operating system, and (b) the Media on which the Software is furnished, if any, will be free from material defects under normal use. Licensor's entire liability and the Customer's sole and exclusive remedy for breach of this Section 10.2 will be limited to either, at Licensor's option, replacement of the Software and Media, if any, at no charge to Customer or refund of the license fee paid by Customer and termination of this Agreement. The warranties in this Section 10.2 shall not apply if, and during the period that, any Licensed Products are provided to Customer for evaluation or trial use.

10.3 Services. Licensor warrants to Customer that all Services provided under this Agreement will be performed by competent personnel with appropriate experience in providing such Services.

10.4 Warranty Limitations. The preceding Licensor warranties do not apply to and, to the full extent permitted by law, Licensor shall have no responsibility for breaches of warranty to the extent arising from: (i) Customer operator errors; (ii) Customer hardware or operating system failures; (iii) the modification of the Software by any person other than Licensor (except as directed or authorized by Licensor); (iv) the combination of the Software with products or services not provided by Licensor (except as directed or authorized by Licensor); (v) Use of any portion of the Software in a manner not permitted or contemplated by this Agreement or the Documentation; (vi) Use of an earlier Version of some or all of the Software other than the current Version or Use of Software without all Updates installed.

10.5 **DISCLAIMERS.** (a) EXCEPT FOR (i) THE WARRANTIES EXPRESSLY STATED ABOVE IN THIS SECTION 10 AND (ii) ANY WARRANTY, REPRESENTATION OR CONDITION TO THE EXTENT THE SAME CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW, LICENSOR AND ITS AFFILIATES, AGENTS, SUBCONTRACTORS AND SUPPLIERS MAKE NO REPRESENTATIONS OR WARRANTIES, AND EXPRESSLY DISCLAIM AND EXCLUDE ANY AND ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY OR UNDER STATUTE, COMMON LAW, CUSTOM, USAGE, COURSE OF PERFORMANCE OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. WITHOUT

LIMITING THE FOREGOING, LICENSOR AND ITS AFFILIATES, AGENTS, SUBCONTRACTORS AND SUPPLIERS DO NOT WARRANT, AND EXPRESSLY DISCLAIM ANY REPRESENTATION OR WARRANTY, THAT THE LICENSED PRODUCTS, CONTENT, SUPPORT, SERVICES OR OTHER DELIVERABLES PROVIDED BY OR ON BEHALF OF LICENSOR WILL SATISFY CUSTOMER'S REQUIREMENTS OR THAT THEIR USE OR OPERATION WILL BE ERROR OR DEFECT FREE OR UNINTERRUPTED, OR THAT ALL SOFTWARE DEFECTS WILL BE CORRECTED. EXCEPT FOR THE EXPRESS WARRANTIES IN SECTION 10, (A) THE LICENSED PRODUCTS ARE PROVIDED "AS IS," WITH ALL FAULTS AND WITHOUT ANY GUARANTEES REGARDING QUALITY, PERFORMANCE, SUITABILITY, TIMELINESS, SECURITY, DURABILITY, INTEGRABILITY OR ACCURACY, AND (B) CUSTOMER ACCEPTS THE ENTIRE RISK OF AND RESPONSIBILITY FOR USE, QUALITY, PERFORMANCE, SUITABILITY AND RESULTS OF USE OF THE LICENSED PRODUCTS AND ITS OWN AUDIT APPROACH OR METHODOLOGY.

(b) NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY LICENSOR, ANY OF ITS AFFILIATES, DISTRIBUTORS, AGENTS, SUBCONTRACTORS OR SUPPLIERS OR THEIR RESPECTIVE EMPLOYEES, OFFICERS OR DIRECTORS WILL INCREASE THE SCOPE OR OTHERWISE ALTER THE TERMS OF ANY WARRANTY EXPRESSLY STATED IN THIS AGREEMENT OR CREATE ANY NEW REPRESENTATIONS, WARRANTIES OR CONDITIONS.

(c) TO THE EXTENT THAT ANY WARRANTIES, REPRESENTATIONS OR CONDITIONS CANNOT BE FULLY DISCLAIMED AND EXCLUDED UNDER APPLICABLE LAW AS CONTEMPLATED BY SECTION 10.5(a), THEN ANY DIFFERENT OR ADDITIONAL LEGALLY REQUIRED WARRANTIES, REPRESENTATIONS OR CONDITIONS, SHALL BE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF SOFTWARE DELIVERY OR SERVICES PERFORMANCE, AS APPLICABLE.

### Section 11. Indemnities

11.1 Infringement Indemnity. (a) General. Licensor agrees (i) to defend Customer against or, at Licensor's option (subject to Section 11.3), settle any unaffiliated third party claim or action brought against Customer asserting that Customer's Use of all or part of the Licensed Products in conformity with this Agreement infringes such third party's copyrights or registered trademarks in the United States, Canada, Australia or the European Union or a third party's patents in the United States, and (ii) to indemnify Customer against actual damages and reasonable costs and expenses assessed against or recovered from Customer as a result of any such claim or action.

(b) Exclusions. Section 11.1(a) does not cover claims or actions based upon or arising out of: (i) Use of the Licensed Products in combination with other non-Licensor-provided products or programs with which the Licensed Products are not authorized or intended to be used; (ii) modification or alteration of the Software by Customer or for Customer by any person other than Licensor or its authorized agent; (iii) Use of the Licensed Products in breach of this Agreement or in a manner not consistent with or contemplated by the Documentation; or (iv) use of a superseded or altered Version of some or all of the Software if infringement would have been avoided or mitigated by the use of a subsequent unaltered Version (with all Updates) of the Software that is provided to Customer as part of Support.

(c) Licensor Cure. If all or part of the Licensed Products become, or in Licensor's opinion, are likely to become, the subject of a third party claim of infringement or violation of such thirty party's intellectual property rights, Licensor may, at its option: (i) procure for Customer the right to continue using the affected Licensed Products; (ii) replace the same with substantially equivalent, non-infringing materials; or (iii) modify the affected Licensed Products so that they become non-infringing without materially changing their functionality. If, in Licensor's opinion, none of the foregoing alternatives are feasible or commercially reasonable, Licensor may terminate Customer's license to the affected Licensed Products, require and accept return of the same, and refund to Customer the unamortized portion of the allocable Software license fees paid by Customer with respect thereto (based on a five-year estimated useful life) and the unused portion of any Customer prepaid, related Support fees.

(d) Exclusive Remedy. To the maximum extent permitted by applicable law, the provisions of this Section 11.1 state the sole, exclusive and entire liability of Licensor and its affiliates, distributors, agents, subcontractors and suppliers, and Customer's sole remedy, with respect to any actual or claimed infringement or other violation of any third party's intellectual property rights.

11.2 General Indemnity. Licensor agrees to indemnify Customer against any liabilities for bodily injury (including death) or tangible property damage to the extent they are caused by the gross negligence or willful misconduct of Licensor or its affiliates, distributors, agents, subcontractors or suppliers, or their respective officers or employees, in providing Support or performing Services for Customer. Except as otherwise provided in Schedule A, and to the maximum extent permitted by applicable law, the foregoing indemnity shall be subject to the limitations contained in this Agreement, including those in Sections 12.

11.3 Indemnification Procedures. The indemnity in this Section 11 is contingent upon: (i) Customer promptly notifying the Licensor in writing of any claim which may give rise to a claim for indemnification; (ii) Licensor being allowed to control the defense and settlement of such claim; and (iii) Customer cooperating with all reasonable requests of Licensor (at Licensor's expense) in defending or settling a claim. Customer shall have the right, at its option and expense, to participate in the defense of any suit or proceeding through a counsel of its own choosing. Licensor may settle any such claim, provided that no settlement of any claim admitting liability of, or imposing duties or restrictions upon, Customer, other than for payment of monetary amounts for which Licensor agrees to be responsible or for termination of Customer's Use of the Software in accordance with Section 11.1, may be effected without the prior written consent of the Customer, which shall not be unreasonably withheld or delayed. The indemnities in this Section 11 shall not apply if, and during the period that, any Licensed Products are provided to Customer for evaluation or trial use.

### Section 12. Limitations of Liability

12.1 Internet Exclusion. THE SOFTWARE MAY BE USED TO ACCESS AND TRANSFER INFORMATION OVER THE INTERNET. CUSTOMER ACKNOWLEDGES AND AGREES THAT LICENSOR AND ITS AFFILIATES, AGENTS, SUBCONTRACTORS AND SUPPLIERS DO NOT OPERATE OR CONTROL THE INTERNET AND THAT (I) VIRUSES, WORMS, TROJAN HORSES, OR OTHER UNDESIRABLE DATA OR SOFTWARE, OR (II) UNAUTHORIZED USERS (E.G. HACKERS), MAY ATTEMPT TO OBTAIN ACCESS TO AND DAMAGE CUSTOMER'S DATA, WEBSITES, COMPUTERS OR NETWORKS. LICENSOR SHALL NOT BE RESPONSIBLE FOR PREVENTION OR EFFECTS OF SUCH ACTIVITIES.

12.2 Customer Responsibility; Professional Advice. CUSTOMER ASSUMES ALL RESPONSBILITIES AND RISKS, FOR ITSELF AND ALL USERS, REGARDING: (I) ALL DATA AND INFORMATION COLLECTED, USED OR INCLUDED IN OR PROCESSED, ACCESSED OR STORED WITH THE LICENSED PRODUCTS; (II) THE PREPARATION, ACCURACY, REVIEW AND USE OF RESULTS OBTAINED THROUGH USE OF THE SOFTWARE OR ANY CONTENT, AND ANY DECISIONS OR ADVICE MADE OR GIVEN TO ANY PARTY BASED ON THE USAGE OF THE LICENSED PRODUCT. LICENSOR AND ITS AFFILIATES, DISTRIBUTORS, AGENTS, SUBCONTRACTORS AND SUPPLIERS ARE NOT ENGAGED IN RENDERING AUDITING, ACCOUNTING, LEGAL OR OTHER PROFESSIONAL OR EXPERT ADVICE OR SERVICES AND ARE NOT RESPONSIBLE FOR HOW THE LICENSED PRODUCT IS USED, THE RESULTS AND ANALYSIS DERIVED BY CUSTOMER BY USE OF THE LICENSED PRODUCT AND ANY DECISIONS THE CUSTOMER MAY TAKE BASED ON CUSTOMER'S USAGE OF THE LICENSED PRODUCT.

12.3 Damages Exclusion. EXCEPT AS OTHERWISE PROVIDED IN SCHEDULE A, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER LICENSOR OR CUSTOMER, NOR THEIR RESPECTIVE AFFILIATES, DISTRIBUTORS, AGENTS, SUBCONTRACTORS OR SUPPLIERS, WILL HAVE ANY LIABILITY WHATSOEVER FOR ANY LOSS OF SALES, PROFITS, BUSINESS, DATA, OR OTHER INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR ANY EXEMPLARY, PUNITIVE OR SPECIAL LOSS OR DAMAGE, EVEN IF ADVISED OF THE POSSIBILITY OF THEIR OCCURRENCE, RESULTING FROM OR ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE LICENSED PRODUCTS, CONTENT, SUPPORT OR ANY SERVICES RENDERED HEREUNDER, OR ANY OTHER CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF THE CLAIM OR ACTION (WHETHER BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, STATUTE OR OTHERWISE), PROVIDED, HOWEVER, THERE SHALL BE NO LIMITATION OF LIABILITY FOR CUSTOMER'S BREACH OF ANY PROVISIONS OF THIS AGREEMENT RELATING TO PROPRIETARY RIGHTS, CONFIDENTIALITY AND NON-DISCLOSURE AND NON-USE OF CONFIDENTIAL INFORMATION.

12.4 Limitations of Liability. Except for any indemnification liability arising under Section 11.1 or 11.2 of this Agreement, and except as otherwise provided in Schedule A, the entire and collective liability of Licensor and its affiliates, distributors, agents, subcontractors and suppliers, arising out of or related to this Agreement, the Licensed Products, Content, Support or Services, or any other cause whatsoever, including without limitation on account of performance or nonperformance of obligations under this Agreement, regardless of the form of the cause of action, whether in contract, tort (including without limitation negligence), statute or otherwise, shall in no event exceed the total fees paid to Licensor in the twelve-month period preceding the date such claim or cause of action first arose. The limitation of liability under this Section will be applied to the maximum extent permitted by applicable law.

12.5 Limitations Period. Any claim or cause of action arising under or otherwise relating to this Agreement, any Order Form, or the Licensed Products, Support, Services or other subject matter hereof or thereof, whether based on contract, tort (including negligence) or otherwise, must be commenced within one year from the date such claim or cause of action first arose.

### Section 13. Term and Termination

13.1 Term. This Agreement will become effective upon Licensor's execution of the Order Form or, if earlier, the Effective Date, and will remain in force until terminated in accordance with the terms hereof.

13.2 Termination. (a) Either party may terminate this Agreement in its entirety, or in part with respect to an Order Form for Services, at any time upon thirty (30) days prior written notice, if the other party materially fails to comply with any of the terms and conditions of this Agreement and such failure is not cured by the end of such thirty (30)-day period. Licensor may terminate this Agreement immediately if Customer materially fails to comply with Sections 2, 3, 4, 5 or 6 of this Agreement.

(b) Unless otherwise specified by the parties in writing, either party may terminate this Agreement in part with respect to the delivery by Licensor of any of the Services upon thirty (30) days' advance written notice. Upon any such partial termination, Licensor shall advise Customer of the extent to which performance of a terminated Service has been completed through such date. Licensor shall be paid for all work performed and expenses with respect to such Service through the date of termination.

13.3 Effects of Termination. Upon termination of this Agreement for cause by Licensor, including due to violation by Customer or Affiliates (or their respective Users) of Sections 2, 3, 4, 5, 6 or 10.1 or for failure to pay any license fee or contractually required Support Fee due hereunder or any applicable Order Form ("Licensor For-Cause Termination"), Customer shall immediately cease using the Licensed Products, return all of the Licensed Products (including all copies thereof, in whatever form) to Licensor, and return to Licensor all of its Confidential Information in tangible form, destroy or erase any computer entries, database entries and any other recordation of Licensor Confidential Information.

13.4 Survival. In the circumstance of a Licensor For-Cause Termination, all license rights granted under Sections 2 and 3 shall be terminated, provided Sections 4, 5, 6, 7 (to the extent payment is still due by Customer) 10.4, 10.5, 12, 13, 14 and 15 shall survive any such termination of the Agreement. In the circumstance of a Customer ceasing to maintain Support or expiration of the Agreement, Sections 2, 3, 4, 5, 6, 7 (to the extent payment is still due by Customer) 10.4, 10.5, 12, 13, 14 and 15 shall survive any such termination or expiration of the Agreement.

## Section 14. Governing Law and Dispute Resolution

14.1 Governing Law. The Parties consent to the application of the Governing Law to govern, interpret and enforce all rights, duties and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles. ~~Unless a different legal jurisdiction is denoted in an Order Form, the "Governing Law" shall be determined by the Customer's principal place of business, as follows: (i) in the North, South or Central America, except Canada: "the laws of the State of Illinois, U.S.A."; (ii) in Canada: "the laws in the Province of Ontario, Canada"; (iii) in Europe, the Middle East and Africa: "the laws of England & Wales," in which event the provisions of Schedule A shall apply to this Agreement; and (iv) in Asia Pacific: "the laws of New South Wales, Australia", in which event the provisions of Schedule B shall apply to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.~~

14.2 Injunctive Relief. Notwithstanding an agreement of the parties to submit disputes under this Agreement for resolution by arbitration, each party agrees that any actual or threatened breach by the other of its obligations under this Agreement relating to proprietary rights, confidentiality and non-disclosure of Confidential Information may cause irreparable damage for which legal remedies are inadequate, and each party agrees that the other may seek immediate injunctive or other equitable relief restraining such actual or threatened breach in any judicial forum, without the need to first secure a judgment or award and without the need to seek arbitration and follow any procedures related thereto.

14.3 ~~Dispute Resolution Method and Venue. Unless otherwise provided in the Order Form, and subject to Section 14.2, any dispute arising under or relating to the subject matter of this Agreement shall be submitted for resolution in the method and to the venue as follows. If Customer's principal place of business is located: (a) in the United States, disputes shall be submitted to a state or federal court in Chicago, Cook County, Illinois; (b) in Canada, disputes shall be submitted to the federal or provincial courts in Toronto, Ontario; (c) in North, Central or South America, disputes shall be submitted for arbitration in Miami, Florida, U.S.A., under the rules of the American Arbitration Association; (d) in Europe, the Middle East and Africa, disputes shall be submitted to arbitration in London, England, under the Arbitration Rules of the London Court of International Arbitration; (e) in Asia Pacific, disputes shall be submitted to arbitration in Sydney, (NSW) Australia, under the rules of the Australian Commercial Disputes Centre Ltd.~~

14.4 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY AND UNCONDITIONALLY WAIVES ITS RIGHT TO A JURY TRIAL FOR ANY CLAIM OR CAUSE OF ACTION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY RELATED DOCUMENTS, THEIR RESPECTIVE SUBJECT MATTER OR RELATED DEALINGS BETWEEN THE PARTIES TO THE MAXIMUM EXTENT PERMITTED BY LAW.

14.5 Arbitration Procedures. The following procedures shall apply to any disputes under this Agreement or in regards to the Licensed Product to which arbitration applies as set forth in Section 14.3 above. Arbitration shall be conducted before a single arbitrator unless the amount in dispute exceeds the equivalent of US $250,000, to be jointly selected and if the parties

cannot agree on such single arbitrator within a period of 30 days after an arbitration proceeding has been filed, then the single arbitrator will be selected in accordance with the applicable arbitral body for the relevant jurisdictions set forth in Section 14.3 above. If the amount in dispute exceeds the equivalent of US $250,000, it shall be decided by three arbitrators, one to be selected by each party and the two party-appointed arbitrators to agree upon the third. The arbitrator(s) must have experience with and knowledge of the licensing of software, and have been admitted to the practice of law for at least ten years. Under no circumstances are the arbitrators authorized to make awards contrary to the damages exclusions, liability limitation, remedial and other provisions of this Agreement. Any court having jurisdiction shall be entitled to enforce the agreement of the parties to arbitrate their disputes and enter judgment on any arbitral award hereunder.

**Section 15. Miscellaneous Provisions**

15.1 Export Controls. Customer acknowledges that the Licensed Products are subject to export controls under United States laws and regulations, including the Export Administration Regulations, 15 C.F.R. Parts 730-774, and may be subject to other applicable laws and regulations in other jurisdictions relating to export, re-export, import, transfer or other disposition of software and other technology (collectively, "Export Control Laws"). From and after Licensor's delivery of the Licensed Products to Customer, Customer shall comply with any and all applicable Export Control Laws applicable to the Licensed Products.

15.2. Government Use. In the event that Customer is an agency of the United States Government or that a license granted hereunder is pursuant to a contract with either a defense or civilian agency of the United States Government, Customer acknowledges that the Software and Documentation, respectively, provided to Customer hereunder constitute commercial computer software and commercial computer software documentation developed at private expense and are subject to the terms and restrictions of this Agreement pursuant to FAR 27.405-3 and DFARS 227.7202. The contractor/manufacturer is Licensor, with an address set forth on the applicable Order Form.

15.3 Entire Agreement. This Agreement, including its Schedules and exhibits, together with all Order Forms, (i) collectively constitute the entire agreement between the parties, and (ii) supersede all prior agreements, understandings, proposals and communications, oral or written, relating to the subject matter of this Agreement. Any purchase order, requisition, work order, request for proposal or other document or record prepared, issued or provided by or on behalf of Customer relating to the subject matter of this Agreement is for administrative convenience only and will have no effect in supplementing, varying or superseding any provisions of this Agreement, regardless of any acknowledgement thereof by Licensor.

15.4 Precedence. In the event of any inconsistency or conflict between the terms and conditions of this Agreement and any Order Form, schedule, exhibit or other attachment, the order of precedence shall be as follows: first, the body of this Agreement; then, any applicable schedules or exhibits to this Agreement; then, any Order Form; then any exhibits or other attachments to any Order Form. In the event of conflict between this Agreement and any Order Form, the body of this Agreement shall govern and control, except to the extent such Order Form makes clear that this Agreement is being amended by such Order Form.

15.5 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision shall be, to the maximum extent permitted by applicable law, construed or limited, and/or deemed replaced by a revised provision, to the extent (and only to the extent) necessary to render it valid, legal and enforceable and, as nearly as possible, to reflect and achieve the parties' intentions in agreeing to the original provision. If it is not possible to so construe, limit or reform any such provision, then the invalid, illegal or unenforceable provision shall be severed from this Agreement. The remaining provisions of this Agreement shall be unaffected thereby and shall continue in full force and effect.

15.6 Amendment; Waiver. This Agreement may be modified or amended by a writing expressly identified as an amendment and signed by both parties. Unless otherwise provided in an amendment, Licensor reserves the right to modify, in its discretion, the terms in the body of this Agreement in connection with (i) the general release of future versions, updates, or upgrades of the Software; and/or (ii) the issuance of invoices for Services. Customer will be provided an opportunity to review and accept or reject any modified Agreement, but continued use of the Software will be subject to Customer's acceptance of such modified Agreement.

15.7 No Third Party Beneficiary. No third party is intended to be or shall be a third party beneficiary of any provision under this Agreement. Licensor and Customer shall be the only parties entitled to enforce the rights set out in this Agreement.

15.8 Assignment. Customer may not assign or transfer this Agreement or any rights or obligations hereunder, without the prior written consent of Licensor, except that, after reasonable prior notice thereof to Licensor, Customer may assign or transfer its rights and obligations under this Agreement to an Affiliate of Customer or to a successor to its business to which this Agreement relates.

15.9 Force Majeure. Except for payment obligations, neither party will be liable to the other for any failure or delay in

performing its obligations under this Agreement due to any cause beyond its reasonable control, including, without limitation, fire, flood, earthquake or other natural catastrophes, acts of war, terrorism or civil disobedience, governmental acts, laws or regulations, embargoes, labor strikes or difficulties, failures of third party suppliers, acts or omissions of carriers, transmitters, providers of telecommunications or Internet services, vandals, hackers, transportation stoppages or slowdowns or the inability to procure parts or materials. Each party will use reasonable efforts to give written notice to the other promptly after becoming aware of any condition or event causing any such excusable performance failure or delay.

15.10 Insurance. During any period in which it is performing Services for Customer, Licensor will maintain (a) workers' compensation with such coverage amounts at least equal to that legally required in jurisdictions in which such Services are being performed, and (b) general liability insurance in commercially reasonable amounts covering liability for bodily injury, death and property damage. Upon written request, Licensor shall promptly provide written confirmation of such insurance coverage.

15.11 Independent Contractor. Each party's relationship to the other is that of an independent contractor. Nothing in this Agreement, and no course of dealing between the parties, shall be construed to create a partnership, joint venture or employment or agency relationship between the parties or between Customer and any Licensor employee, agent or contractor. Neither party has any authority to bind, incur liability for or otherwise act on behalf of the other party, and neither party will represent or imply that it has any such authority.

15.12 Notices. All notices under this Agreement shall be in writing and shall be deemed to have been received upon personal delivery, by facsimile (followed by delivery of a hard copy thereof within five (5) business days of such facsimile), by commercial overnight courier service, or five (5) business days after mailing by certified or registered mail to the address for such party provided in the Order Form.

15.13 Electronic Documents. Any document in electronic format or any document reproduced from an electronic format shall not be denied legal effect, validity, or enforceability solely for that reason and shall meet any requirement to provide an original or print copy.

**EXHIBIT E**
**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 _____ 14th _____ day of ___June 2016___, _____

CONTRACTOR

Authorized Signature  ___*Faye Mrozek*___

/ FAYE MROZEK

Title  SR. MANAGER, CUSTOMER SUPPORT

# City of Austin FSD Purchasing Office
## Certificate of Exemption

DATE: 10/26/2015       DEPT: CTM

TO: Purchasing Officer or Designee     FROM: Stephen Elkins

BUYER: Jane Neal               PHONE: (512) 974-1644

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.

$20,245 for a 12-month contract with three 12-month options ($21,257.25, $22,320.11, $23,436.12 for a total contract amount not to exceed $87,258.48) with Wolters Kluwer Financial Services for the TeamMate® Suite software license, maintenance and support. TeamMate® is the Windows-based electronic audit management system used by the Office of the City Auditor

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).

It has been verified that Wolters Kluwer Financial Services is the owner and has full right and title to license the TeamMate® Suite software

6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Wolters Kluwer Financial Services which will cost approximately $ 87,258.48 (Provide estimate and/or breakdown of cost).

| | | |
|---|---|---|
| Recommended Certification | *[signature]* <br> Originator | 27 OCT 2015 <br> Date |
| Approved Certification | *Stephen A. Elkins* <br> Department Director or designee | 11/02/2015 <br> Date |
| | Assistant City Manager / General Manager Date or designee (if applicable) | |
| Purchasing Review (if applicable) | *[signature] Neal* <br> Buyer | 12/3/15 <br> Date    *[initials]* <br> Manager Initials |
| Exemption Authorized (if applicable) | Purchasing Officer or designee | Date |

02/26/2013