



Amendment No. 1  
to  
Contract No. 1500 NA180000180  
for  
Invoice Management Solution  
Between  
Apptricity Corporation  
and the  
City of Austin

- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be September 5, 2019 through September 6, 2020. One option will remain.
- 2.0 The total contract amount is increased by \$5,800.00 by this extension period. The total contract authorization is recapped below:

Action	Action Amount	Total Contract Amount
Initial Term: 09/06/2018 – 9/5/2019	\$10,080.00	\$10,080.00
Amendment No. 1: Option 1 – Extension 09/06/2019 9/5/2020	\$5,800.00	\$15,880.00

- 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: Wayne Sparks 8/23/19

Printed Name: WAYNE SPARKS, CFO  
Authorized Representative

Apptricity Corporation  
5605 N. MacArthur Blvd. 900  
Irving, Tx 75038  
214-596-0601  
[tgarcia@apptricity.com](mailto:tgarcia@apptricity.com)

Sign/Date: James Howard 8/23/19

James Howard  
Procurement Manager

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

**CONTRACT BETWEEN THE CITY OF AUSTIN  
AND  
APPTRICITY CORPORATION  
FOR  
INVOICE MANAGEMENT SOLUTION**

**CONTRACT NUMBER: MA 1500 NA180000180**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and Apptricity Corporation ("Contractor"), having offices at 5605 N. MacArthur Blvd, Suite 900, Irving, TX 75038.

**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 Timothy D. Garcia, Phone: (214) 596-0601, Email Address: [tgarcia@apptricity.com](mailto:tgarcia@apptricity.com) . The City's Contract Manager for the engagement shall be David McCluggage, Phone: (512) 974-6465, Email Address: [David.McCluggage@austintexas.gov](mailto:David.McCluggage@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. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$10,080 for the initial 12 month term, \$5,800 for Option 1 and \$5,800 for Option 2, for a total contract amount not-to-exceed \$21,680. Invoice management fees are billed quarterly in advance based on the minimum contracted volumes. Subsequent quarterly billings are subject to adjustment should actual usage exceed annual contracted volumes.

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	Austin Resource Recovery
Attention	Accounts Payable
Email Address	<a href="mailto:ARR.AP@austintexas.gov">ARR.AP@austintexas.gov</a>

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.

### 3.3 **Payment.**

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

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

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

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

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

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

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

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

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to

the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

**3.5 Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

**3.5.1 Administrative.** The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

**3.5.2 Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City'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/category/21287>

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.

### **3.6 Final Payment and Close-Out.**

**3.6.1** The making and acceptance of final payment will constitute:

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

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

## **SECTION 4. TERM AND TERMINATION**

**4.1 Term of Contract.** The Contract shall commence on the date executed by the City (Effective Date), unless otherwise specified, and shall remain in effect for an initial term of 12 months. The Contract may be extended beyond the initial term for up to 2 additional 12 month periods at the City's sole option.

**4.1.1** If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.

**4.1.2** Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).

**4.1.3** This is a 36 month Contract. Prices are firm for the first 36 months.

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

**4.3 Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the

bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

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

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

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

## **SECTION 5. OTHER DELIVERABLES**

5.1 **Insurance:** The following insurance requirements apply.

### **5.1.1 General Requirements.**

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

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

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' 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.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin Purchasing Office  
P. O. Box 1088  
Austin, Texas 78767

OR

[PURInsuranceCompliance@austintexas.gov](mailto:PURInsuranceCompliance@austintexas.gov)

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor 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.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, 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 the Contractor.

5.1.2.1 **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.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

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

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

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor 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:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **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:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

## 5.1 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.1.2 **Americans With Disabilities Act (ADA) Compliance.** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.2 **Interested Parties Disclosure.** As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:



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

5.4 **Delays.**

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

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

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

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

## **SECTION 6. WARRANTIES**

6.1 **Warranty – Price.**

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

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

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

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

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



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

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

## **SECTION 7. MISCELLANEOUS**

7.1 **Place and Condition of Work.** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the Contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

### **7.2 Workforce.**

7.2.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.2.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.2.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.2.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

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

7.4.1 disposal of major assets;

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

7.4.3 any significant termination or addition of provider contracts;

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

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

7.4.6 reorganization, reduction and/or relocation in key personnel;

7.4.7 known or anticipated sale, merger, or acquisition;

7.4.8 known, planned or anticipated stock sales;

7.4.9 any litigation against the Contractor; or

7.4.10 significant change in market share or product focus.

## 7.5 **Audits and Records.**

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

### 7.5.2 Records Retention:

7.5.2.1 Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.

7.5.2.2 All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City.

7.5.3 The Contractor shall include sections 7.5.1 and 7.5.2 above in all subcontractor agreements entered into in connection with this Contract.

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

## 7.7 **Indemnity.**

### 7.7.1 Definitions:

7.7.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and

expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

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

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

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

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

**7.8 Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2<sup>nd</sup> Street, 4<sup>th</sup> Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

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

To the City:

City of Austin, Purchasing Office

ATTN: Elisa Folco, Procurement Specialist IV

P O Box 1088

Austin, TX 78767

To the Contractor:

Apptricity Corporation

ATTN: Timothy D. Garcia – CEO/President

220 E. Las Colinas Blvd., Suite 400

Irving, TX 75039

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

circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

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

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

7.13 **Gratuities.** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

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

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

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

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

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

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

7.20 **Dispute Resolution.**

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

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

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

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

7.23 **Holidays.** The following holidays are observed by the City:

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

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

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

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

7.26 **Incorporation of Documents. Section 0100, Standard Purchase Definitions,** is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

[https://assets.austintexas.gov/purchase/downloads/standard\\_purchase\\_definitions.pdf](https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf)

#### 7.27. **Information Technology.**

Add the following definitions:

**“Affiliate”** means, including but not limited to, (i) City’s parent subsidiaries, partnerships, joint ventures, franchisees, assigns, business partners, contractors, subcontractors and consultants, controlling, controlled by or under common control of City as they may change from time to time and (ii) Users, as they may change from time to time.

**“Amendment”** means any written document executed by both Parties that modifies the terms of this Master

Software as a Service Agreement, including referenced attachments.

**“Authorized Persons”** means the service provider’s employees, contractors, subcontractors or other agents who need to access the City’s personal data to enable the service provider to perform the services required.

**“Change Order Request”** means the written document provided by Client to Provider requesting changes to

Provider’s obligations under this Agreement.

**“Change Order Response”** means the written document provided to Client by Provider in response to

Client’s Change Order Request.

**“City”** means any government or government agency that uses these terms and conditions.

The term is a placeholder for the government or government agency.

**“City Data”** means all data created, received, or in any way originating with the City, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in an way originated with the City, whether such data or output is stored on the City’s hardware, the service provider’s hardware or exists in any system owned, maintained or otherwise controlled by the City or by the service provider.

**“City Identified Contact”** means the person or persons designated in writing by the City to receive security incident or breach notification.

**“Confidential Information”** means all written or oral information, disclosed by either Party to the other, related to the operation of either Party or a third party that has been identified as

confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential.

**“Data Breach”** means the unauthorized access by a non-authorized person/s that results in the use, disclosure or theft of a City’s unencrypted personal data.

**“FACTA” means the Fair and Accurate Credit**

**Transaction Act. “Illicit Code”** has the meaning set

forth in 0300IT Paragraph 22.

**“Personally Identifiable Health Information”** means information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.<sup>1</sup>

**“Non-Public Data”** means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the City because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

**“Non-subscription Services”** means the services provided to Client by Provider under this Agreement that are not included in the definition of Subscription Services, Non-subscription Services shall include, but not be limited to, consulting, implementation, customization and other services provided to Client by Provider under this Agreement, together with all documentation provided by or otherwise required of Provider for any of the consulting, implementation, customization or other services it provides.

**“Personal Data”** means data that includes information relating to a person that identifies the person by name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver’s license, passport), financial account information, including account number, credit or debit card numbers, or protected health information (PHI) relating to a person.

**“Provider Information”** means all techniques, algorithms and methods or rights thereto owned by or licensed to Provider during the term of this Agreement and employed by Providers in connection with the Subscription Services and the Non-subscription Services Provided to Client.

**“Provider Software”** means software that was developed or licensed to Provider independent of this Agreement and which Provider utilizes to provide the Subscription Services or the Non-subscription Services.

**“Security Incident”** means the potentially unauthorized access by non-authorized persons to personal data or non-public data the service provider believes could reasonably result in the use, disclosure or theft of a City’s unencrypted personal data or non-public data within the possession or control of the service provider. A security incident may or may not turn into a data breach.

**“Service Level Agreement” (SLA)** means a written agreement between both the City and the service provider that is subject to the terms and conditions in this document that unless otherwise agreed to includes (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) security responsibilities and notice requirements, (5) how disputes are discovered and addressed, and (6) any remedies for performance failures.



**“Service Levels”** means the performance specifications for work performed by Provider under a SaaS Subscription Schedule or Statement of Work.

**“Software-as-a-Service” (SaaS)** means the capability provided to the City to use the provider’s applications running on a cloud infrastructure. The applications are accessible from various client devices through a thin- client interface such as a Web browser (e.g., Web-based email) or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

**“SaaS Software Application”** and **“SaaS Software”** mean the computer software listed on a SaaS Subscription Schedule to which Provider has granted Client access and use as part of the Subscription. This includes any customization, other derivative works, upgrades, releases, fixes, patches, etc. related to the software that Provider develops or deploys during the term of this Agreement, together with all documentation provided by or otherwise required of Provider for any of the software, customization, other derivative works, upgrades, releases, fixes, patches, etc.

**“SaaS Subscription Schedule”** means the document, executed by both Parties that sets out the Parties’ rights and obligations with respect to Client’s access to and use of the SaaS Software Application.

**“Statement/Scope of Work”** means a written statement in a solicitation document or contract that describes the City’s service needs and expectations

**“Subscription Services”** means Client’s access to and use of and Provider’s provision of the SaaS Software Applications and other services listed on a SaaS Subscription Schedule and in accordance with the terms and conditions set forth in the SaaS Subscription Schedule.

**“Third Party”** means any natural person or legal entity other than Provider and Client.

**“Transition Date”** means the date upon which it is established to Client’s satisfaction that the SaaS Software Application is stable enough to support Client’s production processing.

**“User”** means Client’s employees, agents, consultants, outsourcing companies, contractors and others who are authorized by Client to access and use the SaaS Software Applications and any part or portion of the Subscription Services or non-Subscription Services in the performance of their duties for Client.

**“User Information”** means all information directly or indirectly obtained from Users accessing the SaaS Software Applications where such information is obtained by Provider or by any of its employees, representatives, agents or any Third Parties having contractual privity with Provider or who are under Provider’s supervision or control.

**“Work Product”** means, except for the Provider Information, all deliverable and other materials, products or modifications developed or prepared for Client by Provider under this Agreement, including without limitation, any integration software or other software, all data, program images and text viewable on the Internet, any HTML code relating thereto, or any program code, including program code created, developed or prepared by Provider under or in support of the performance of its obligations under this Agreement, including manuals, training materials and documentation, but excluding the Provider Software.

## **10. SOFTWARE TERMS:**

- A. In the event of termination of the contract, the service provider shall implement an orderly return of City data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of City data.
- B. During any period of service suspension, the service provider shall not take any action to intentionally erase any City data.
- C. In the event of termination of any services or agreement in its entirety, the service provider shall not take any action to intentionally erase any City data for a period of:
  - 10 days after the effective date of termination, if the termination is in accordance with the contract period
  - 30 days after the effective date of termination, if the termination is for convenience
  - 60 days after the effective date of termination, if the termination is for cause. After such period, the service provider shall have no obligation to maintain or provide any City data and shall thereafter, unless legally prohibited, delete all City data in its systems or otherwise in its possession or under its control.
- D. The City shall be entitled to any post-termination assistance generally made available with respect to the services unless a unique data retrieval arrangement has been established as part of the SLA.
 

The service provider shall securely dispose of all requested data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the City. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the City.
- E. Data Location: The service provider shall provide its services to the City and its end users solely from data centers in the U.S. Storage of City data at rest shall be located solely in data centers in the U.S. The service provider shall not allow its personnel or contractors to store City data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The service provider shall permit its personnel and contractors to access City data remotely only as required to provide technical support. The service provider may provide technical user support only on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in this contract.
- F. Import and Export of Data: The City shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the service provider. This includes the ability for the City to import or export data to/from other service providers.
- G. Data Ownership: The City will own all right, title and interest in its data that is related to the services provided by this contract. The service provider shall not access City user accounts or City data, except
  - (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract, or (4) at the City's written request.
- H. Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the service provider to ensure there is no inappropriate or unauthorized use of City information at any time. To this end, the service provider shall safeguard the confidentiality, integrity and availability of City information and comply with the following conditions:
  - 1. The service provider shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.

2. All data obtained by the service provider in the performance of this contract shall become and remain property of the City.
  3. All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of this contract.
  4. Unless otherwise stipulated, the service provider shall encrypt all non-public data at rest and in transit. The City shall identify data it deems as non-public data to the service provider. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.
  5. At no time shall any data or processes – that either belong to or are intended for the use of a City or its officers, agents or employees – be copied, disclosed or retained by the service provider or any party related to the service provider for subsequent use in any transaction that does not include the City.
  6. The service provider shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.
- 
- I. Compliance with Accessibility Standards: The service provider shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.
  - J. Security: The service provider shall disclose its non-proprietary security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and the service provider. For example: virus checking and port sniffing – the City and the service provider shall understand each other's roles and responsibilities.
  - K. Security in Compliance with Chapter 521 of the Texas Business and Commerce Code: Service provider shall comply with all requirements under Chapter 521 of the Texas Business and Commerce Code, including but not limited to being responsible for a program that protects against the unlawful use or disclosure of personal information collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also address appropriate corrective action for events of any security breach and proper methods of destroying records containing sensitive personal information.
  - L. Security Incident or Data Breach Notification: The service provider shall inform the City of any security incident or data breach.
  - M. Incident Response: The service provider may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the City should be handled on an urgent as-needed basis, as part of service provider communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.
  - N. Security Incident Reporting Requirements: The service provider shall report a security incident to the appropriate City identified contact immediately as defined in the SLA.
  - O. Breach Reporting Requirements: If the service provider has actual knowledge of a confirmed data breach that affects the security of any City content that is subject to applicable data breach notification law, the service provider shall (1) promptly notify the appropriate City identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.
  - P. Breach Responsibilities: This section only applies when a data breach occurs with respect to personal data within the possession of control of service provider.

- Q. The service provider, unless stipulated otherwise, shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.
- R. The service provider, unless stipulated otherwise, shall promptly notify the appropriate City identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a data breach. The service provider shall:
  - (1) cooperate with the City as reasonably requested by the City to investigate and resolve the data breach,
  - (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive action taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- S. Unless otherwise stipulated, if a data breach is direct result of the service provider's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the service provider shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) establishing a website or a toll-free number and call center for affected individuals required by state law – all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by service provider based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.
- T. **Responsibilities and Uptime Guarantee:** The service provider shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing, and maintaining the environments are the responsibilities of the service provider. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in the SLA.
- U. **Web Services:** The service provider shall use Web services exclusively to interface with the City's data in near real time when possible.
- V. **Encryption of Data at Rest:** The service provider shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data, unless the City approves the storage of personal data on a service provider portable device in order to accomplish work as defined in the statement of work.

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

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

7.28.2 the Supplemental Purchase Terms and Conditions;

7.28.3 the Standard Purchase Terms and Conditions;

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

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

APPTRICITY CORPORATION

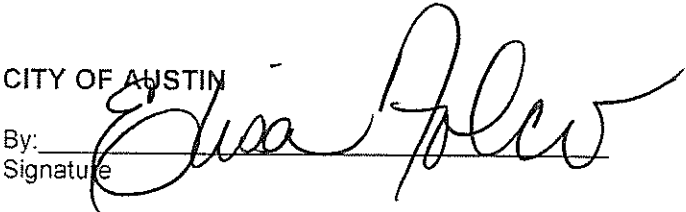
By:   
Signature

Name: Timothy Garcia  
Printed Name

Title: CEO / President

Date: Sept. 5, 2018

CITY OF AUSTIN

By:   
Signature

Name: Elisa Folco  
Printed Name

Title: Procurement Specialist IV

Date: 09-06-2018

## List of Exhibits

Exhibit A	Apptricity Offer
Exhibit B	Licensing, Copyright and Proprietary Provisions
Exhibit C	Maintenance and Support
Exhibit D	Non Discrimination Certification, Section 0800

Exhibit A  
Apptricity Offer

[illegible]



## Schedule A

### LICENSING, COPYRIGHT AND PROPRIETARY PROVISIONS

#### A) Licenses:

- A.1 License Grant. Subject to the terms and conditions of this Contract, Apptricity Corporation (Contractor) grants to City, and City accepts from Apptricity Corporation, a limited, restricted, revocable, non-transferable, and non-exclusive right to use Apptricity Product Module(s).
- A.2 Installation. Licensee will be provided the Application Service through the Internet.
- A.3 Server License. INTENTIONALLY OMITTED.
- A.4 Transaction License. Transactions, equal to the number of Transactions per year set out in a Statement of Work that are processed by an Apptricity Product Module(s). "Transaction" means any expense report submission (time & attendance, schedule or commission) or delivery confirmation input manually or electronically into the Apptricity System for processing
- A.5 User License. Users, equal to the number of User Licenses set out in Statement of Work, who may utilize the software on a computer or workstation capable of assessing or otherwise utilizing a licensed Server. Users must choose a personal, non-transferable password. User accounts may not be "shared" or used by more than one individual. A User License may be transferred to an alternative User only if a previous User has been deactivated by an administrator.
- A.6 Facility License. Facilities, equal to the number of Facility Licenses set out in a Statement of Work, may utilize an Apptricity Product Module(s).
- A.7 Apptricity Client License. Apptricity Client users, equal to the number of Apptricity Client Licenses set out in Statement of Work, may utilize the Apptricity Product Module(s), and mobile data synchronization capabilities on the device which synchronizes with a licensed Server.
- A.8 License Quantity Upgrade. City may increase the number of licenses authorized hereunder by paying to Apptricity the respective Application Service fees for such Transactions, Users, Facilities and Apptricity Clients as set forth in a Statement of Work.
- A.9 Apptricity Product Module. City may only obtain a license for Apptricity Product Module(s) from Apptricity Corporation. City shall have no intellectual property rights or other ownership rights in or to any Apptricity Product Module and is prohibited from any assignment (except as set forth in the Contract) or resale thereof.
- A.10 Customization. City has no right to create, modify, enhance or otherwise alter an Apptricity Product Module (or any part or parameter thereof) other than look-and-feel, User and system administration using integrated Apptricity tools.
- A.11 Permitted Uses. City may:
  - (a) Store, manipulate, analyze, reformat, print, and display the content only for City's use. City is responsible for any and all activities that occur under its account. City shall notify Apptricity promptly of any unauthorized use of its password or account or any other breach of security that is known or suspected by City. Neither Apptricity nor Apptricity Corporation shall be responsible for any unauthorized access to, or alteration of, City transmissions or data, any material, information or data sent or received, any Transactions entered into through the Application Service, or any failure by City to abide by this Agreement; and
  - (b) Make a reasonable number of copies of the user documentation accompanying the Apptricity System up to the number of Users licensed by City, if applicable, and provided that City reproduces the Apptricity copyright notice in the original in such copies.
- A.12 Prohibited Uses. City may not:
  - (a) Reverse engineer, decompile, disassemble, translate, reproduce, modify, or make derivative works of all or any part of the Apptricity System, or grant any other person or entity the right to do so except to the extent laws expressly prohibit such restriction;
  - (b) Backup or make archival copies of the Apptricity System for any purpose;
  - (c) Except as otherwise set forth herein, sell, transfer, distribute, sublicense, lease or rent the Apptricity System to any third party;
  - (d) Create any frames, mirrors or machine-to-machine links to the Application Service or any content contained thereon accessible from any non-Licensee server or device; or

- (e) Use the Apptricity System as a business process outsourcer, which includes the provision of services to third parties for outsourced business operations, transactions, functions or processes, for a non-Licensee.
  - A.13 Termination/Reduction in Service Level. This Agreement shall automatically renew as set forth in Schedule A unless any party requests termination or reduction in service level by notifying the other party in writing at least ninety (90) calendar days in advance of the termination date of the then current term. This Agreement commences upon contract execution and is non-cancelable during the Initial Term (as defined in Statement of Work) unless it terminated for cause by any party as set forth below.
  - A.14 Termination Procedure. In the event of the termination of this Agreement for any reason, all monies due and not subject to a good faith dispute between the parties shall become due and payable upon the effective date of termination, City's right to use the Apptricity Product Modules and Application Service immediately ceases, and neither Apptricity nor Apptricity Corporation shall have any obligation, except as stated herein. City must return to Apptricity or destroy all copies of Apptricity Materials. Further, City shall purge the Apptricity System, Apptricity Materials and Confidential Information, including backups in any media form, and certify such destruction in writing. Apptricity will subsequently make available a file of City's data stored by Apptricity (if any) within sixty (60) calendar days of termination if City so requests.
- B) **Copyright:** The Apptricity System is licensed not sold. Title and copyrights in and to the Apptricity System, and accompanying printed, embedded, or on-line materials or documentation, and any copies made as permitted herein, are owned by Apptricity Corporation or its licensor and are protected by United States copyright laws and international treaty provisions.
- C) **Proprietary:**
- C.1 No Implied Transfer. Nothing in this Agreement shall be construed, explicitly or implicitly, as transferring or conveying to a party ownership in any intellectual property now or hereafter owned by or controlled by Apptricity, Apptricity Corporation, or any of their respective licensors. This Agreement contemplates a license of the Apptricity System and Application Service, not a sale. City will not have any ownership rights in the Apptricity System and Application Service.
- C.2 Apptricity's Intellectual Property Rights. City hereby acknowledges and agrees that Apptricity Corporation and its licensors retain all Intellectual Property Rights in or related to the Apptricity System and Application Service, including, without limitation, all improvements thereto. City hereby assigns to Apptricity Corporation all Intellectual Property Rights (defined below) it may now or hereafter possess in or related to the Apptricity System and Application Service and all improvements thereto, and City agrees to (i) execute all documents and take all actions that may be necessary to confirm such rights; and (ii) retain all Apptricity Marks (defined below), legends, and patent and copyright notices on any CCI or other information related to the Apptricity System and Application Service delivered to City by Apptricity. Furthermore, City covenants and agrees to assist and cooperate with Apptricity Corporation in the registration and protection of its Intellectual Property Rights. "Intellectual Property Rights" means all forms of intellectual property rights and protections in any country or other jurisdiction of the world including, without limitation, all right, title and interest in all associated (a) issued patents and all filed or pending applications for patents, including any continuations, continuations in part, reissues, reexaminations, substitutions, and extensions thereof, in any country or other jurisdiction in the world; (b) trade secrets and all trade secret rights, rights in Confidential Information (as defined in Section 4.4) or proprietary information, and any similar rights arising under the laws of any country or other jurisdiction; (c) copyrights, mask works, and other literary property or author's rights, whether or not protected by copyright registration or as a mask work; and (d) any Marks. "Marks" means any trademarks, logos, trade names, service marks, and commercial symbols applied to the Apptricity System and otherwise used by Apptricity in the marketing of its products.
- C.3 Marks, Copyrights, Patents and Trade Secrets. All of the Marks applied to Apptricity System developed and/or licensed by Apptricity Corporation and otherwise used by Apptricity in the marketing of its products, all copyrights of material used in connection with the Apptricity System, and all patents, if any,

covering Apptricity System, are the exclusive property of Apptricity Corporation. The structure, organization, and code (source and object) of Apptricity System are valuable trade secrets and the exclusive property of Apptricity Corporation. Additionally, Apptricity Materials except for marketing materials, shall be considered CCI and proprietary trade secrets, unless they are otherwise excluded in this Contract.

## Exhibit C

### Schedule E Maintenance and Support

*After a solution has been deployed into production, Appticity Customer Support Service (CSS) will provide prompt response to trouble reports. CSS will cooperate closely with City or City designated representative to troubleshoot issues affecting system performance or operation. CSS support is available by phone or email during the hours 08:30 to 17:30 Central Standard Time, Monday through Friday except U.S. Federal holidays. City may elect to obtain Premium Support (24x7) for an incremental Transaction and/or User fee. City will also be able to contact CSS after hours in case of an emergency. The figure below depicts the CSS process for responding to phone inquiries and emails.*

By Phone	By Email
City contacts CSS at 214.598.0601	City emails CSS at <a href="mailto:support@appticity.com">support@appticity.com</a>
CSS consultant establishes nature of the issue	Include the following in the email: <ul style="list-style-type: none"> <li>• City requester, phone number, and email address</li> <li>• Product and version number</li> <li>• Full customer environment</li> <li>• Query or steps to reproduce the issue</li> </ul>
Call is directed to the appropriate technical resource	Issue is logged, prioritized, and escalated to the appropriate resource.
Priority is assigned depending on classification of the issue	CSS notifies requester of issue tracking number within one (1) hour of logging issue.
Requester is given tracking number for the issue	If issue is not resolved within the period defined in the escalation (severity) scale. CSS will periodically inform requester or resolution status.

CSS tracks and resolves issues and enhancement requests using the escalation (severity) scale as depicted in the below figure.

Severity	Definition	Expected Response Times
Urgent	City experiences a system failure, affecting business or customer base. Critical business impact with no alternative available.	Response from CSS within two (2) working hours of logging issue. Update requester daily or as otherwise explicitly agreed between the parties. CSS will provide an acceptable workaround within eight (8) working hours so long as City provides Appticity with remote access.
High	System degradation causing critical business impact, yet work may continue. Alternative or bypass available.	Response from CSS within four (4) working hours. Update requester daily or as otherwise explicitly agreed between the parties. CSS will provide an acceptable workaround within forty (40) working hours so long as City provides Appticity with remote access.
Normal	Product functionality queries and problems. Not critical, deferred maintenance acceptable, circumvention possible with no operational impact.	Response from CSS within eight (8) working hours. Update requester as necessary or as otherwise explicitly agreed between the parties.



Low	Cosmetic enhancement request. Defect logged.	Response from CSS within two (2) working days. Logged in appropriate development database and considered for future release.
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#### Service Level Agreement:

Service Level Agreements ("SLA's") with respect to CSS tracking and resolving issues and enhancement requests are based upon the escalation (severity) scale as set forth in Schedule E of the SaaS Subscription Agreement. Compliance with the following SLA's will be reported for each ninety-day period (an "SLA Reporting Period") by Apptricity using calendar quarters based on United States Central Standard Time. Should the "go-live" not fall on the first day of a calendar quarter the first such SLA Reporting Period will represent the date beginning on the "go-live" date and ending on the first full calendar quarter completed following such "go-live" date. The results (an "SLA Report") of an SLA Reporting Period will be due to Licensee on or before the thirtieth day following the end of the SLA Reporting Period and will be deemed accepted by Licensee if no objection made within fifteen (15) days of receipt. If not accepted, Licensee and Apptricity will work collaboratively in an expeditious manner to resolve any discrepancies noted in the SLA Report. SLA's will be measured only to the extent that a severity matter is within the reasonable control of Licensor. For example, a network outage at Licensees operating location impeding access to the Apptricity System will not be considered an outage. A Fee Adjustment will apply for each SLA reporting period with any amounts of such adjustment to be remitted to Licensee within fifteen (15) days of Licensees acceptance of the SLA Report by Licensee. The Fee Adjustment represents the Fee Adjustment % times the fees invoiced to the Licensee for the SLA Reporting Period.

Table 1 - Customer Support Services SLA

Severity	Service Level Agreement	SLA Measure and Fee Adjustment %
Urgent	<p>#1a): Response from CSS within two (2) working hours of logging issue. Update requester daily or as otherwise explicitly agreed between the parties.</p> <p>#1b): CSS will provide an acceptable workaround within eight (8) working hours so long as Licensee provides Appticity with remote access</p>	<p>The SLA Measure is determined by one (1) minus the failure rate; such failure rate determined based on aggregate number of issue tickets not meeting the SLA measure for the SLA Reporting Period divided by the aggregate number of issue tickets during the SLA Reporting Period. SLA Measure will be separately determined for each of #1a and #1b.</p> <p>SLA Measure - <math>\geq 96\%</math> Fee Adjustment 0%.  SLA Measure - <math>\geq 92.5\%</math> and <math>&lt; 96\%</math> Fee Adjustment of 1%  SLA Measure - <math>&lt; 92.5\%</math> Fee Adjustment of 1.5%</p>
High	<p>#2a): Response from CSS within four (4) working hours. Update requester daily or as otherwise explicitly agreed between the parties.</p> <p>#2b): CSS will provide an acceptable workaround within forty (40) working hours so long as Licensee provides Appticity with remote access</p>	<p>The SLA Measure is determined by one (1) minus the failure rate; such failure rate determined based on aggregate number of issue tickets not meeting the SLA measure for the SLA Reporting Period divided by the aggregate number of issue tickets during the SLA Reporting Period. SLA Measure will be separately determined for each of #2a and #2b.</p> <p>SLA Measure - <math>\geq 96\%</math> Fee Adjustment 0%.  SLA Measure - <math>\geq 92.5\%</math> and <math>&lt; 96\%</math> Fee Adjustment of 1%  SLA Measure - <math>&lt; 92.5\%</math> Fee Adjustment of 1.5%</p>
Normal	#3: Response from CSS within eight (8) working hours. Update requester as necessary or as otherwise explicitly agreed between the parties.	<p>The SLA Measure is determined by one (1) minus the failure rate; such failure rate determined based on aggregate number of issue tickets not meeting the SLA measure for the SLA Reporting Period divided by the aggregate number of issue tickets during the SLA Reporting Period.</p> <p>SLA Measure - <math>\geq 96\%</math> Fee Adjustment 0%.  SLA Measure - <math>\geq 92.5\%</math> and <math>&lt; 96\%</math> Fee Adjustment of 1%  SLA Measure - <math>&lt; 92.5\%</math> Fee Adjustment of 1.5%</p>
Low	#4: Response from CSS within two (2) working days. Logged in appropriate development database and considered for future release.	<p>The SLA Measure is determined by one (1) minus the failure rate; such failure rate determined based on aggregate number of issue tickets not meeting the SLA measure for the SLA Reporting Period divided by the aggregate number of issue tickets during the SLA Reporting Period.</p> <p>SLA Measure - <math>\geq 96\%</math> Fee Adjustment 0%.</p>

Severity	Service Level Agreement	SLA Measure and Fee Adjustment %
		SLA Measure - >= 92.5% and <96% Fee Adjustment of 1% SLA Measure - <92.5% Fee Adjustment of 1.5%

#### Customer Service Metrics

Apptricity uses a number of metrics to evaluate the quality of our customer service. These metrics include the time to resolution of issues, number of outstanding issues, issues requiring rework, and others. In addition, we conduct periodic customer service surveys to solicit feedback on our work and highlight any quality issues or other deficiencies that need attention.

We are proud to say that the quality of support provided by our CSS staff is a key factor in our customers adding additional Apptricity's applications when expanding their business automation.



CSS logs customer issues using the below stages:

Stage	Support Area	Responsibility
0	City	Provide relevant information at point of logging call, log call with CSS via telephone or email. Ensure CSS is aware of availability of contacts and operating environment. Assign priority with CSS at point of logging call. Understand support processes, initial schedule, and escalation procedures.
1	City (1 <sup>st</sup> line support)	Take calls and emails from end-user, confirm status and assign issue-tracking number in accordance with the appropriate logging process. Gather relevant information and assign priority. Carry out analysis/diagnosis of log. Communicate progress, resolution and management of logs. Escalate to second-line support as appropriate. Confirm escalation priority.
2	CSS (2 <sup>nd</sup> line support)	Communicate progress, resolution and management of logs. Triage resolution efforts with CSSFE and CSSDE staff.
3	CSS Field Engineer (CSSFE)	Communicate progress and resolution for all tracked items under their review. Provide analysis and technical updates to customer.
4	CSS Development Engineer (CSSDE)	Communicate progress and resolution status to CSS first-line support for further communication to customer.

#### City's Responsibilities

- City shall provide required technical and application support services to their respective personnel and shall work through CSS for issues that the City is unable to resolve.
- City shall provide support for all non-Apptricity supported products.

#### Apptricity Responsibilities

- Apptricity shall attempt to identify, reproduce and, where available, validate defect on an in-house test environment.
- Apptricity shall provide workarounds and/or software fixes, within the service level guidelines above, for additional City testing and installation.
- Apptricity shall provide City with service releases and associated documentation.
- Apptricity shall manage the software defect process.

#### General

Apptricity uses a number of metrics to evaluate the quality of its service. These metrics include the time to resolution of issues, number of outstanding issues, issues requiring rework, and others. In addition, Apptricity conducts periodic customer service surveys to solicit feedback on our work and to highlight any quality issues or other deficiencies it must address.

**EXHIBIT D**  
**City of Austin, Texas**  
**NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas**  
**Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (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, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office 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, 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 City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

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

**City of Austin**  
**Minimum Standard Non-Discrimination and Non-Retaliation 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.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

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 and non-retaliation 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 THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

**Sanctions:**

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy 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 and the Non-Retaliation Policy.


**Term:**

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, 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 payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 5<sup>TH</sup> day of SEPTEMBER, 2018

CONTRACTOR  
Authorized  
Signature

Title

Apptricity Corporation  
  
CEO/President