CONTRACT BETWEEN THE CITY OF AUSTIN
AND
ThousandEyes Inc.
For
Maintenance Renewal of Public Safety Systems

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and ThousandEyes Inc. ("Contractor"), having offices at 201 Mission Street, Suite 1700 San Francisco 94105.

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 Cassie Marable at cmarable@thousandeyes.com. The City's Contract Manager for the engagement shall be Tony Williams, Phone: (512) 974-0977, Email Address: Tony.willams@austintexas.gov. The City and the Contractor will use commercially reasonable efforts 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 an amount not-to-exceed $59,848.500 for the initial 12-month contract term. For each of three additional twelve month options the Contractor shall be paid $59,848.500 for a total not-to-exceed amount of $239,394.00 for all fees and expenses, provided that all option periods are exercised in full. Failure to exercise any option period or to decrease any quantity will render all subsequent option period pricing null and void.

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

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

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

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

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 third party claims for which Contractor has liability pursuant to this Agreement and that are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

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

3.3.3.3 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; or

3.3.3.4 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation.

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 or 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 and completion of a close out certificate 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, , (3) arising from the Contractor's obligations continuing under the Contract after termination, including but not limited to any 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.** This Contract shall be in effect on the date executed by the City [Effective Date) and shall remain in effect for (12) months or the City terminates the Contract.

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 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. 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 required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Equal Opportunity.**

5.2.1 **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 parties acknowledge and agree that such certificate has been previously provided to the City and remains valid. 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:
https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

5.3 **Reserved.**

5.4 **Rights to Proposal Material.** All proposal 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.

5.5 **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.** 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.

6.2 **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.

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.

7.2 **Audits and Records.**

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

7.2.2 Records Retention:

7.2.2.1 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" shall have the meaning as set forth in Section 2-11-1(B)(10) of City Code chapter 2-11 (Records Management).

7.2.2.2 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.

7.2.2.3 Notwithstanding the foregoing, Contractor shall own all right, title and interest in and to the cloud-based services and support provided by Contractor; the general measurements regarding application availability, performance, and security obtained through use of the service; specifications, user manuals and training materials that Contractor makes available to the City; any deliverables or other materials created in the course of delivering the service; any and all related and underlying technology and documentation and any derivative works or modifications of the foregoing.

7.3 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local laws or regulations, 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.

7.4 **Indemnity.**

7.4.1 Definitions:

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

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

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

7.4.1.2 "Fault" shall include negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

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

7.5 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under 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 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

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

To the City:	To the Contractor:
City of Austin, Purchasing Office	ThousandEyes, Inc.
ATTN: Jane Neal, Procurement Specialist II	ATTN: General Counsel
P O Box 1088	201 Mission Street, Suite 1700
Austin, TX 78767	San Francisco, California 94105

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

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

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

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

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

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

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

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

7.15 **Modifications.** The Contract can be modified or amended only 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.

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

7.17 **Dispute Resolution.**

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

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

7.18 **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

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

7.18.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.18.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.19 **Subcontractors.**

7.19.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.19.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.19.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.19.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.19.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.19.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.19.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.19.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.19.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.20 **Living Wages.** The Contractor shall maintain throughout the term of the Contract basic employment and wage information for each employee as required by the federal Fair Labor Standards Act (FLSA).

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 either party 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:

Holiday	Date Observed
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

7.27 **Order of Precedence.** The Contract includes, without limitation, the Offer submitted in response to the Solicitation, the Contract award, the terms and conditions stated in full herein, Supplemental Terms and Conditions contained in Vendor's Order Form attached hereto (including specifically the Master Subscription Agreement attached to Vendor's Order Form), 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.

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

7.27.2 the Supplemental Purchase Terms and Conditions;

7.27.3 the terms and conditions stated in full herein;

7.27.4 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.

THOUSANDEYES INC.	CITY OF AUSTIN
DocuSigned by:	
By: Michael Staiger	By: Jane Neal
Signature 30380431...	Signature
Name: Michael Staiger	Name: Jane Neal
Printed Name	Printed Name
Title: CFO	Title: Procurement Specialist II
Date: March 1, 2019	Date: 03/01/2019

Head of Legal

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List of Exhibits

Exhibit A	ThousandEyes Inc. Offer with Annex A
Exhibit B	Non Discrimination Certification
Exhibit C	Non-Suspension or Debarment Certification

Exhibit A

This Order Form ("Order Form") is executed by and between ThousandEyes, Inc. ("ThousandEyes") and City of Austin - CTECC ("Customer"). By executing this Order Form, Customer agrees to purchase the services specified below (the "Service(s)") for the period specified below ("Subscription Term"). This Order Form shall be governed by the Master Subscription Agreement attached as Annex A to this Order Form (either, the "Agreement").

Module	Start	End	Term (Months)	Quantity	Unit Price	Discount (%)	Total Price (USD)
Units	3/2/2019	3/1/2020	12	9,750,000	$0.00053	15	$52,708.50
Device Layer	3/2/2019	3/1/2020	12	40	$9.00000	15	$3,672.00
Endpoint Agents	3/2/2019	3/1/2020	12	10	$9.00000	15	$918.00
Renewal Optimization Package	3/2/2019	3/1/2020		1	$3,000.00000	15	$2,550.00
						3/2/2019 - 3/1/2020 TOTAL:	$59,848.50

Option Year 1 *

Module	Start	End	Term (Months)	Quantity	Unit Price	Discount (%)	Total Price (USD)
Units	3/2/2020	3/1/2021	12	9,750,000	$0.00053	15	$52,708.50
Device Layer	3/2/2020	3/1/2021	12	40	$9.00000	15	$3,672.00
Endpoint Agents	3/2/2020	3/1/2021	12	10	$9.00000	15	$918.00
Renewal Optimization Package	3/2/2020	3/1/2021		1	$3,000.00000	15	$2,550.00
						3/2/2020 - 3/1/2021 TOTAL:	$59,848.50

Option Year 2 *

Module	Start	End	Term (Months)	Quantity	Unit Price	Discount (%)	Total Price (USD)
Units	3/2/2021	3/1/2022	12	9,750,000	$0.00053	15	$52,708.50
Device Layer	3/2/2021	3/1/2022	12	40	$9.00000	15	$3,672.00
Endpoint Agents	3/2/2021	3/1/2022	12	10	$9.00000	15	$918.00
Renewal Optimization Package	3/2/2021	3/1/2022		1	$3,000.00000	15	$2,550.00
						3/2/2021 - 3/1/2022 TOTAL:	$59,848.50

Option Year 3 *

Module	Start	End	Term (Months)	Quantity	Unit Price	Discount (%)	Total Price (USD)
Units	3/2/2022	3/1/2023	12	9,750,000	$0.00053	15	$52,708.50
Device Layer	3/2/2022	3/1/2023	12	40	$9.00000	15	$3,672.00
Endpoint Agents	3/2/2022	3/1/2023	12	10	$9.00000	15	$918.00
Renewal Optimization Package	3/2/2022	3/1/2023		1	$3,000.00000	15	$2,550.00
						3/2/2021 - 3/1/2022 TOTAL:	$59,848.50

TOTAL $239,394.00

* All option year pricing is contingent on every option being exercised in full. Failure to exercise any option period or to decrease any quantity will render all subsequent option period pricing null and void.

Prepared For

Primary Contact	Tony Williams	Quote Name	City of Austin - CTECC - Renewal 2019-03-02
Contact Email	tony.williams@austintexas.gov	Quote Number	Q-06883
Expiration Date	3/1/2019	Sales Rep	Chase Patterson
Payment Terms	Net 30	Sales Rep Email	cpatterson@thousandeyes.com
Pricebook	TE Pricebook		

Invoice To

Bill To Name	City of Austin	Ship To Name	City of Austin - CTECC
Bill To Contact	Tony Williams	Ship To Contact	Tony Williams
Bill To Address	314 W 2nd St FL 4 Austin, TX 78701	Ship To Address	314 W 2nd St FL Austin, TX 78701 US
Bill To Email	tony.williams@austintexas.gov	Ship To Email	
	tony.williams@austintexas.gov Bill To Phone	512-974-0977	Ship To Phone
	512-974-0977		

Purchase Order Number #_____(leave blank if not required for invoicing)

Terms & Condition

The fees shown above will be invoiced annually in advance of each year during the Subscription Term and are payable by Customer within 30 days of the date of invoice. If Customer specifies a purchase order ("PO") number on the first page of this Order Form, Customer agrees that no preprinted provision of any PO or other business form issued by Customer will add to or supersede the terms of this Order Form or any other agreement between the parties. If Customer does not specify a PO on the first page of this Order Form, Customer authorizes ThousandEyes to invoice Customer against this Order Form in lieu of a PO.

The onboarding and/or consulting services under this Order Form shall expire, if unused, one (1) year from the beginning of 3/2/2019.

NOTE: For the Subscription set forth in this Order Form, Customer has instructed ThousandEyes to cap Customer's monthly Purchased Units at the quantity shown above. If Customer wishes to remove the cap Customer may notify ThousandEyes in writing (email acceptable). If Customer elects to remove the cap and, during any month, Customer exceeds the monthly quantity ("Purchased Units") shown above, such excess usage will be priced at 1.2 times the applicable unit sales price(s) shown above; ThousandEyes will invoice Customer following the end of the month in which the excess usage occurred; such invoice is payable by Customer within 30 days of the date of invoice.

Accepted and agreed to:

CUSTOMER:

Signature: Jane Neal

Print Name: Jane Neal

Title: Procurement Specialist II

Date: 03/01/2019

Thank you for your business!

THOUSANDEYES:

DocuSigned by:

Signature: Michael Staiger

135311130380431...

Print Name: Michael Staiger

Title: CFO

Date: March 1, 2019

Head of Legal

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Annex A to Order Form

Master Subscription Agreement

Posted November 27, 2018

This Master Subscription Agreement ("**Agreement**") permits Customer and/or its Affiliates (as defined below) to purchase a subscription to, and make use of, services from ThousandEyes, Inc. ("**ThousandEyes**"), pursuant to one or more ThousandEyes Order Form(s). In the event of any inconsistency between the terms of an Order Form and this Agreement, the terms of the Order Form will have precedence.

1. ThousandEyes Services

1. SaaS Subscription. ThousandEyes offers a suite of services designed to help customers measure and monitor the availability, performance and security of web applications, hosted services and networks. The Service is provided for the Subscription Term designated on the applicable Order Form.

2. Support. Subject to this Agreement, ThousandEyes will provide Support Services and privacy and security measures as described in the Support Services and Security Policy located at: https://app.thousandeyes.com/legal/support-security (as may be modified in ThousandEyes's discretion, provided that no update will materially diminish the level of Support Services or privacy and security measures provided to Customer).

3. Professional Services. ThousandEyes may from time to time perform Professional Services in connection with the Service as may be agreed upon by the parties and reflected in an Order Form. Unless otherwise specified in the Order Form, all Professional Services shall be provided on a time and materials basis.

4. Storage of Performance Metrics. ThousandEyes uses commercially reasonable efforts to store Performance Metrics for up to ninety (90) days. At any time during the applicable Subscription Term, Customer may download, store, and use Performance Metrics in accordance with Section 2.4, below.

5. Pre-release Version of the Service. ThousandEyes may, in its discretion, permit Customer to access one or more pre-release features, capabilities, and versions of the Service that, at the time of such access, are not generally available to ThousandEyes customers (the "**Beta Service**"). Beta Services are identified as such, and Customer may elect to use or forego the use of Beta Services. Customer understands and agrees that: (i) the Beta Service is a beta test version of an unreleased service that may contain bugs, defects and errors and it is not suitable for production use; (ii) the Beta Service is not expected to contain the functionality or functions of the version of such service that ThousandEyes may make available for commercial distribution in the future (the "**Commercial Release**"), and (iii) any feedback provided by Customer pertaining to the Beta Service is provided "as is" without any warranty of any kind, and may be used by ThousandEyes in any way, including, without limitation, for development of, and incorporation into, the Commercial Release and other ThousandEyes products or services, without restriction or further obligation to Customer or any other party. In consideration of the licenses granted herein, Customer agrees to use good faith efforts to test, use, and evaluate the Beta Service in non-production operations and environments only. ThousandEyes has no obligation to correct any bugs, defects or errors in the Beta Service or otherwise to support or maintain the Beta Service. Moreover, ThousandEyes has no obligation to create, distribute or otherwise offer a Commercial Release, and if ThousandEyes elects to make such Commercial Release generally available, ThousandEyes has no obligation to offer the Commercial Release to Customer under any special terms.

Customer acknowledges that any expenditures made, research or development performed, or business plans made, by Customer regarding or in reliance upon the Beta Service are done entirely at Customer's own risk. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE BETA SERVICE AND ALL OTHER MATERIALS PROVIDED UNDER THIS SECTION ARE PROVIDED "AS IS", WITHOUT WARRANTY OF ANY KIND, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR USE OR PURPOSE. THOUSANDEYES DOES NOT WARRANT THAT THE BETA SERVICE WILL FUNCTION WITHOUT INTERRUPTION OR THAT IT IS ERROR-FREE. CUSTOMER BEARS THE ENTIRE RISK AS TO THE USE OR PERFORMANCE OF THE BETA SERVICE AND THOUSANDEYES WILL HAVE NO LIABILITY WHATSOEVER WITH RESPECT THERETO. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY THOUSANDEYES OR ITS AGENTS OR EMPLOYEES WILL IN ANY WAY AFFECT THIS SECTION.

2. Customer Rights and Obligations

1. Access and Use. Subject to the terms and conditions in this Agreement, including payment of applicable fees, ThousandEyes grants to Customer the limited, nonexclusive, nontransferable right to access and use the Service during the Subscription Term solely for its internal business purposes. All Service use must be in accordance with this Agreement, including the applicable Order Form(s) and the other terms and conditions incorporated therein.

2. Permitted Users. Customer may permit its Permitted Users to access and use the Service, provided that: (a) Customer remains responsible for compliance with the terms and conditions of this Agreement by all Permitted Users and (b) use of the Service by any Permitted User is for the sole benefit of Customer or its Affiliates. Customer will ensure that all Permitted Users keep Security Credentials strictly confidential. Customer will (a) use commercially reasonable efforts to prevent unauthorized access to or use of the Service under its account, (b) notify ThousandEyes promptly of any such unauthorized access or use, and (c) use the Service only in accordance with the applicable documentation, applicable laws and government regulations, and any written instructions provided by ThousandEyes to Customer. Customer understands that failure to protect Security Credentials may allow an unauthorized person or entity to access the Service. In addition, Customer acknowledges that ThousandEyes generally does not have access to and cannot retrieve lost Security Credentials. Customer agrees that: (a) Customer is solely responsible for collecting, inputting and updating all Security Credentials; (b) ThousandEyes assumes no responsibility for the supervision, management or control of Customer's and Customer Permitted User's Security Credentials; and (c) ThousandEyes assumes no responsibility for any fraudulent or unauthorized use of the Service. Customer will promptly notify ThousandEyes of any suspected or alleged violation of this Agreement and will cooperate with ThousandEyes with respect to: (a) investigation by ThousandEyes of any suspected or alleged violation of this Agreement and (b) any action by ThousandEyes to enforce this Agreement. ThousandEyes may suspend or terminate any Permitted User's access to the Service in the event that it reasonably determines that such Permitted User has violated this Agreement.

3. General Restrictions. Customer will not: (a) sell, resell, rent, or lease the Service, (b) copy, provide access to, sublicense or otherwise make the Service (or any part thereof) accessible to a third party or anyone other the Permitted Users, except as expressly permitted in this Agreement; (c) incorporate the Service (or any part thereof) into another product or service Confidential Page 2 of 4 or otherwise use the Service (or any part thereof) to provide any product or service to a third party in any manner; (d) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code to the Service, except to the extent expressly permitted by applicable law (and then only upon advance notice to ThousandEyes); (e) modify the Service or any Documentation, or create any derivative product from any of the foregoing; (f) remove or obscure any proprietary or other notices contained in the Service (including any reports or data printed from the Service); (g) publicly disseminate information regarding the performance of the Service; (h) use the Service or collect or use (or authorize the collection or use of) Performance Metrics, or deploy ThousandEyes software agents, without all appropriate rights and licenses in place; (i) violate any laws or

regulations in performance of this Agreement or use of the Services; (j) attempt to gain unauthorized access to any systems, networks, or data of ThousandEyes or any third party; (k) interfere with or disrupt the integrity or performance of any ThousandEyes or third party systems, data, or networks; (l) use any Services in violation of any third party terms of service, terms of use, or other online posted terms, or (m) use the Service to store or transmit viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

4. Customer's Right to Use Performance Metrics. Subject to the terms and conditions of this Agreement, during the Subscription Term, ThousandEyes grants to Customer a limited, perpetual, royalty-free, irrevocable license to copy, store, make derivative works of and use the Performance Metrics for any internal business purpose permitted under this Agreement. For the avoidance of doubt, the metrics subject to the aforementioned license are limited to the Performance Metrics related to Customer only and do not pertain to metrics associated with any party other than Customer, whether aggregated or otherwise.

3. Ownership

ThousandEyes and its suppliers retain all right, title and interest (including all patent, copyright, trade secret and other intellectual property rights) in and to the ThousandEyes Technology.

4. Fees and Payment

1. Fees and Payment. Fees are set forth in the applicable Order Form and shall be paid by Customer in U.S. dollars within thirty (30) days of the ThousandEyes's invoice date. Except as otherwise expressly set forth in this Agreement, all fees are non-refundable and are not subject to deduction or set off. Fees are exclusive of, and Customer is required to pay, all sales, use, GST, value-added, withholding or similar taxes or levies, whether domestic or foreign, that are applicable to or result from Customer's purchase or use of the Service, other than taxes based on ThousandEyes's net income.

2. Excess Usage; Increasing Purchased Units. If Customer's usage exceeds the Purchased Units, ThousandEyes will invoice Customer and Customer will pay for any such excess usage at rates consistent with the applicable Order Form.

5. Term and Termination

1. Term; Termination. This Agreement is effective on the Effective Date and continues in full force and effect unless terminated pursuant to the terms hereof. Either party may terminate this Agreement (including all related Order Forms) if the other party fails to cure any material breach of this Agreement (including a failure to pay fees) within thirty (30) days after written notice; provided that ThousandEyes may suspend access to the Services if Customer fails to pay an invoice when due.

2. Effect of Termination. Upon any termination or expiration hereof, Customer and all Permitted Users will immediately cease access to and use of the Service (including any and all related ThousandEyes Technology) and delete (or, at ThousandEyes's request, return) any and all copies of the Documentation, any Security Credentials, and any other ThousandEyes Confidential Information. Except for termination for ThousandEyes's breach under Section 5.1, or as set forth in Section 6.1 (Warranty) or Section 8 (Indemnity), upon termination of this Agreement, Customer's payment obligations for the then-current Subscription Term will be accelerated and any unpaid fees (including fees for excess usage) will be immediately due and payable. Following termination or expiration, ThousandEyes may delete any such data stored by ThousandEyes at any time. Except where an exclusive remedy is specified, the exercise of either party of any remedy under this Agreement, including termination, will be without prejudice to any other contractual, legal, or other remedies.

3. Survival. Sections 2.4 (Customer's Right to Use Performance Metrics), 3 (Ownership), 4 (Fees and Payment), 5 (Term and Termination), 6.2 (Warranty Disclaimer), 7 (Limitation of Liability), 8 (Indemnity), 9 (Confidential Information), and 10 (General Terms) will survive any expiration or termination of this Agreement.

6. Limited Warranty and Disclaimer

1. Warranty. ThousandEyes warrants that (a) it is organized, validly existing and in good standing under the laws of the jurisdiction of its organization; (b) this Agreement is the legal, valid, and binding obligation of ThousandEyes; (c) ThousandEyes will not knowingly introduce and will use commercially reasonable efforts designed to detect and prevent any virus, trap door, worm or any other disabling device from contaminating the Service and (d) during the applicable Subscription Term the Service will operate in substantial conformity with the Documentation. ThousandEyes does not warrant that Customer's use of the Service will be uninterrupted or error-free, that ThousandEyes will review the Performance Metrics for accuracy or that it will preserve or maintain the Performance Metrics or other data without loss. ThousandEyes's sole liability and Customer's entire remedy for any breach of warranty will be for ThousandEyes to use commercially reasonable efforts to provide a workaround for the reported non-conformity or, if ThousandEyes cannot do so, then ThousandEyes will terminate the Subscription Term and refund any prepaid unearned fees to Customer. This limited warranty and remedies do not apply if: (i) the error was caused by modifications to the Service or ThousandEyes Technology other than by ThousandEyes or its agents, or combination, operation or use of the Service with Customer's or a third party's applications, software, hardware, services or systems, or (ii) use by Customer of the Services outside the scope of the license in Section 2 (Customer Rights and Obligations) or otherwise in violation of this Agreement.

2. Warranty Disclaimer. EXCEPT AS EXPRESSLY WARRANTED IN SECTION 6.1, THOUSANDEYES MAKES NO WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT. THOUSANDEYES WILL NOT BE LIABLE FOR DELAYS, INTERRUPTIONS, SERVICE FAILURES, OR OTHER PROBLEMS INHERENT IN USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS, OR CAUSED BY SYSTEMS OR OTHER FACTORS OUTSIDE THOUSANDEYES'S REASONABLE CONTROL.

7. Limitation of Liability

1. Consequential Damages. EXCEPT FOR VIOLATION OF SECTION 2.3 (GENERAL RESTRICTIONS) OR OTHER MISAPPROPRIATION OF THOUSANDEYES'S INTELLECTUAL PROPERTY, NEITHER PARTY WILL BE LIABLE FOR ANY LOSS OF USE, LOST OR INACCURATE DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS AND THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

2. Limitation of Liability. EXCEPT FOR BREACHES OF SECTION 2 (CUSTOMERS RIGHTS AND OBLIGATIONS), SECTION 8 (INDEMNITY) OR A BREACH OF SECTION 9 (CONFIDENTIAL INFORMATION), AND EXCEPT FOR DIRECT DAMAGES TO THE EXTENT ARISING OUT OF A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, EACH PARTY'S ENTIRE AGGREGATE LIABILITY WILL NOT EXCEED THE AMOUNT ACTUALLY PAID OR PAYABLE BY CUSTOMER UNDER THE APPLICABLE ORDER FORM IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM.

8. Indemnity

ThousandEyes will defend or settle, at its option and expense, any third party claim alleging that the Service when used as permitted hereunder infringes or misappropriates a patent, copyright, trademark, or trade secret (a "**Claim**"), provided that Customer provides ThousandEyes: (i) prompt written notice of such Claim; (ii) the sole right to control and direct the investigation, defense and settlement (if applicable) and any subsequent appeal of such Claim, (but ThousandEyes will not settle or otherwise resolve any Claim that does not contain a full release of Customer without Customer's prior written approval, which will not be unreasonably withheld); and (iii) all reasonable necessary cooperation in connection with the Claim. In addition, ThousandEyes will pay all damages and costs (including reasonable legal fees) finally awarded by a court of final appeal attributable to a Claim. Customer agrees that ThousandEyes will have no obligation to indemnify for any Claim (1) if the Service is modified by any party other than ThousandEyes or its agents, but solely to the extent the alleged infringement is caused by such modification; (2) if the Service is used in combination with any services, software, or equipment, but solely to the extent the alleged infringement is caused by such combination; or (3) relating to or arising from unauthorized use of the Services. If your use of the Service is, or in ThousandEyes's reasonable opinion is likely to be, subject to a Claim under this Section 8, ThousandEyes may, at its sole option and at no charge to Customer (and in addition to its indemnity obligation to Customer in this Section 8): (i) procure for Customer the right to continue using the Service; (ii) replace or modify the Service so that it is noninfringing and substantially equivalent in function to the original Service; or (iii) if options (i) and (ii) above are not commercially practicable in its reasonable estimation, ThousandEyes may terminate this Agreement and Customer's use of the Service and ThousandEyes will refund to Customer a pro rata portion of the price originally paid for Service for the remainder of the unexpired Subscription Term. THIS SECTION SETS FORTH THOUSANDEYES'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

9. Confidential Information

All code, inventions, know-how, pricing, business, technical and financial information or other non-public information one party ("**Recipient**") obtains from the other party ("**Discloser**") constitute Discloser's confidential information ("**Confidential Information**"); provided that this Agreement and all Order Forms are considered each party's Confidential Information. Except as expressly authorized herein, Recipient will hold in confidence and not use or disclose any Confidential Information to any third party except for its employees and contractors who have a need to know such information in connection with their performance or receipt of the Services, and who are under confidentiality obligations consistent with the terms of this Agreement. Recipient's nondisclosure obligation will not apply to information which: (a) was rightfully in its possession or known to it without an obligation of confidentiality prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of Recipient; (c) is rightfully obtained by Recipient from a third party without breach of this section; or (d) is independently developed by Recipient without use of or reference to Confidential Information. Recipient may disclose Discloser's Confidential Information if required pursuant to a regulation, law or court order, but only to the minimum extent required to comply therewith, and provided that Recipient provides prior notice to Discloser (to the extent legally permissible) and cooperates reasonably with Discloser at Discloser's expense regarding any protective actions Discloser wishes to undertake. The Recipient shall, within thirty (30) days after the expiration or termination of this Agreement, either: (i) return to the Discloser in a secure manner, all Confidential Information (or such portion requested), including any copies, duplicates, summaries, abstracts or other representations of any such Confidential Information, in whatever form, then in its possession or control; or (ii) permanently delete such Confidential Information from its computer and storage systems and media, and destroy any and all tangible copies thereof. Upon request by the Discloser, the Recipient shall deliver to the Discloser written certification of its compliance with this provision. Customer has the sole responsibility for maintaining copies of its information and reports generated through the use of the Service.

10. General Terms

1. Assignment. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement without the other party's prior written consent; however, either party may, upon notice, but without obtaining consent, assign this Agreement in connection with a merger, acquisition, business combination, change in control or transfer of all or substantially all of such party's assets or voting securities. Any attempted assignment in violation of this section will be null and void.

2. Affiliates. Any Affiliate of Customer may enter into separate Order Forms with ThousandEyes under this Agreement via duly executed Order Form(s) that incorporate by Reference the terms and conditions of this Agreement; provided that Customer shall remain liable for any and all actions and liabilities of its Affiliates.

3. Severability. If any provision hereof is found by a court to be unenforceable, it will be enforced to the maximum extent permissible under the circumstances so as to effect the parties' intent, and the remaining provisions hereof will remain in full force and effect.

4. Governing Law; Jurisdiction and Venue. This Agreement is governed under California law without regard to conflicts of laws provisions, and without regard to the United Nations Convention on the International Sale of Goods or UCITA. The jurisdiction and venue for actions arising under this Agreement will be the state and federal courts for San Francisco, California; both parties submit to the personal jurisdiction of such courts.

5. Notice. Any notices hereunder will be in writing and sent to the other party at its address set forth on the Order Form or at such other address as may be provided by such party in writing (including via email) and will be deemed received by the addressee: (a) if delivered in person, immediately upon receipt; (b) if sent by overnight courier service or email, the first business day following dispatch, or (c) if sent by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is mailed. All notices to ThousandEyes must be sent to its CFO and Head of Legal's attention.

6. Amendments; Waivers. Except as otherwise set forth herein, no supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by each party.

7. Entire Agreement. This Agreement, together with the Support Services and Security Policy referenced in Section 1.2 and any Order Form(s) are the complete and exclusive statement of the parties' understanding; it supersedes all previous or contemporaneous agreements and communications relating to the subject hereof. No provision of any purchase order or other business form issued by Customer (or Affiliate) related to purchases under this Agreement will supersede this Agreement, and any terms and conditions contained in such purchase order or other business form shall be null and void.

8. Force Majeure. Neither party will be liable for any failure to perform hereunder due to causes beyond its reasonable control.

9. Independent Contractors. The parties hereto are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

10. Publicity. ThousandEyes may identify Customer as a ThousandEyes customer in marketing materials, provided such identification does not indicate endorsement.

11. Government Users. Elements of the Service are commercial computer software. If Customer or a Permitted User is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Service, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this

Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Service was developed fully at private expense. All other use is prohibited.

11. Definitions

"**Affiliate(s)**" mean a company that controls, owns, or is under common control of either ThousandEyes or Customer.

"**Documentation**" means the specifications, user manuals and training materials that ThousandEyes makes generally available to all its customers relating to the use and operation of the Service.

"**Order Form(s)**" means an order for the Service, Support Services or Professional Services which describes applicable pricing, Subscription Term and other business terms executed by ThousandEyes and Customer.

"**Permitted User(s)**" means individuals whom Customer has granted authorization to use the Service on behalf of Customer subject to the terms and conditions of this Agreement.

"**Performance Metrics**" means general measurements regarding application availability, performance, and security obtained through use of the Service solely to the extent such measurements are specific to Customer.

"**Professional Services**" means professional services delivered by ThousandEyes to Customer pursuant to a duly executed Order Form.

"**Purchased Unit(s)**" means the quantity of the Service as specified in an Order Form.

"**Security Credentials**" means any and all information provided by Customer or any Customer Permitted User to establish secure transmissions for use of the Service, including but not limited to personal information, information used to identify account names or account numbers, routing information, usernames, passwords, access codes and prompts.

"**Service**" means the cloud-based service delivered by ThousandEyes to Customer under an Order Form.

"**Subscription Term**" means the time period for which Customer has purchased access to the Service, as specified in an Order Form.

"**ThousandEyes Technology**" means the Service, Performance Metrics, Documentation, any deliverables or other materials created in the course of delivering the Service, Support Services or Professional Services, any and all related and underlying technology and documentation, and any derivative works or modifications of the foregoing.

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EXHIBIT B

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 compliant, 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 filling. 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 First day of March, 2019

CONTRACTOR ThousandEyes, Inc.

Authorized Signature DocuSigned by: Michael Staiger 135311130380431...

Title CFO

Head of Legal

DS JN

DocuSign Envelope ID: CD43057E-15B5-4CFC-9F49-DE8C080941AC

EXHIBIT C

City of Austin, Texas
Section 0805
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. Covered transactions include procurement contracts for goods or services equal to or in excess of $25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of $25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name: ThousandEyes, Inc.

Signature of Officer or Authorized Representative: DocuSigned by: Michael Staiger 135311130380431... Date: March 1, 2019

Printed Name: Michael Staiger

Title: CFO

Head of Legal

DS
JN

ThousandEyes

201 Mission Street, Suite 1700
San Francisco, California 94105
US

This Order Form ("Order Form") is executed by and between ThousandEyes, Inc. ("ThousandEyes") and City of Austin - CTECC ("Customer"). By executing this Order Form, Customer agrees to purchase the services specified below (the "Service(s)") for the period specified below ("Subscription Term"). This Order Form shall be governed by the subscription agreement located at https://app.thousandeyes.com/legal/agreement, unless ThousandEyes and Customer have previously executed a signed Master Subscription Agreement, in which case shall govern this Order Form (either, the "Agreement").

Module	Start	End	Term (Months)	Quantity	Unit Price	Discount (%)	Total Price (USD)
Units	3/2/2019	3/1/2020	12	9,750,000	$0.00053	15	$52,708.50
Device Layer	3/2/2019	3/1/2020	12	40	$9.00000	15	$3,672.00
Endpoint Agents	3/2/2019	3/1/2020	12	10	$9.00000	15	$918.00
Renewal Optimization Package	3/2/2019	3/1/2020		1	$3,000.00000	15	$2,550.00
						3/2/2019 - 3/1/2020 TOTAL:	$59,848.50

Module	Start	End	Term (Months)	Quantity	Unit Price	Discount (%)	Total Price (USD)
Units	3/2/2020	3/1/2021	12	9,750,000	$0.00053	15	$52,708.50
Device Layer	3/2/2020	3/1/2021	12	40	$9.00000	15	$3,672.00
Endpoint Agents	3/2/2020	3/1/2021	12	10	$9.00000	15	$918.00
Renewal Optimization Package	3/2/2020	3/1/2021		1	$3,000.00000	15	$2,550.00
						3/2/2020 - 3/1/2021 TOTAL:	$59,848.50

Module	Start	End	Term (Months)	Quantity	Unit Price	Discount (%)	Total Price (USD)
Units	3/2/2021	3/1/2022	12	9,750,000	$0.00053	15	$52,708.50
Device Layer	3/2/2021	3/1/2022	12	40	$9.00000	15	$3,672.00
Endpoint Agents	3/2/2021	3/1/2022	12	10	$9.00000	15	$918.00
Renewal Optimization Package	3/2/2021	3/1/2022		1	$3,000.00000	15	$2,550.00
						3/2/2021 - 3/1/2022 TOTAL:	$59,848.50

ThousandEyes

201 Mission Street, Suite 1700
San Francisco, California 94105
US

Module	Start	End	Term (Months)	Quantity	Unit Price	Discount (%)	Total Price (USD)
Units	3/2/2022	3/1/2023	12	9,750,000	$0.00053	15	$52,708.50
Device Layer	3/2/2022	3/1/2023	12	40	$9.00000	15	$3,672.00
Endpoint Agents	3/2/2022	3/1/2023	12	10	$9.00000	15	$918.00
Renewal Optimization Package	3/2/2022	3/1/2023		1	$3,000.00000	15	$2,550.00
						3/2/2022 - 3/1/2023 TOTAL:	$59,848.50

Prepared For

Primary Contact	Tony Williams	Quote Name	City of Austin - CTECC - Renewal 2019-03-02
Contact Email	tony.williams@austintexas.gov	Quote Number	Q-06883
Expiration Date	3/1/2019	Sales Rep	Chase Patterson
Payment Terms	Net 30	Sales Rep Email	cpatterson@thousandeyes.com
Pricebook	TE Pricebook		

Invoice To

Bill To Name	City of Austin	Ship To Name	City of Austin - CTECC
Bill To Contact	Tony Williams	Ship To Contact	Tony Williams
Bill To Address	314 W 2nd St FL 4 Austin, TX 78701 US	Ship To Address	314 W 2nd St FL 4 Austin, TX 78701 US
Bill To Email	tony.williams@austintexas.gov	Ship To Email	tony.williams@austintexas.gov
Bill To Phone	512-974-0977	Ship To Phone	512-974-0977

Purchase Order Number # DO 5600 19 030107 (leave blank if not required for invoicing)
2416

Terms & Conditions

The fees shown above will be invoiced annually in advance of each year during the Subscription Term and are payable by Customer within 30 days of the date of invoice. If Customer specifies a purchase order ("PO") number on the first page of this Order Form, Customer agrees that no preprinted provision of any PO or other business form issued by Customer will add to or supersede the terms of this Order Form or any other agreement between the parties. If Customer does not specify a PO on the first page of this Order Form, Customer authorizes ThousandEyes to invoice Customer against this Order Form in lieu of a PO.

The onboarding and/or consulting services under this Order Form shall expire, if unused, one (1) year from the beginning of 3/2/2019.

NOTE: For the Subscription set forth in this Order Form,Customer has instructed ThousandEyes to cap Customer's monthly Purchased Units at the quantity shown above. If Customer wishes to remove the cap Customer may notify ThousandEyes in writing (email acceptable). If Customer elects to remove the cap and, during any month, Customer exceeds the monthly quantity ("Purchased Units") shown above, such excess usage will be priced at 1.2 times the applicable unit sales price(s) shown above; ThousandEyes will invoice Customer following the end of the month in which the excess usage occurred; such invoice is payable by Customer within 30 days of the date of invoice.

ThousandEyes

201 Mission Street, Suite 1700
San Francisco, California 94105
US

Accepted and agreed to :

CUSTOMER:	**THOUSANDEYES:**
Signature	Signature Jane Neal
Print Name Jane Neal	Print Name Jane Neal
Title	Title Procurement Specialist II
Date	Date 03/01/2019

Thank you for your business!