



**CONTRACT BETWEEN THE CITY OF AUSTIN ("City")
and
PFM Solutions LLC ("Contractor")
for
Synario Financial Forecasting Subscription Agreement**

Contract Number: MA 2200 NS210000029

The City accepts the Contractor's Offer for the above requirement and enters into the following Contract. This Contract is between PFM Solutions LLC having offices at 1735 Market Street, 43rd Floor, Philadelphia, PA 19103 and the City, a home-rule municipality incorporated by the State of Texas. Capitalized terms used but not defined herein have the meanings given in the Solicitation.

1.1 This Contract is composed of the following documents in order of precedence:

- 1.1.1 This Document
- 1.1.1 City of Austin Standard Terms and Conditions incorporated herein and attached as Exhibit A hereto.
- 1.1.2 Contractor's Offer, **Synario Software Subscription Agreement**, incorporated herein and attached as Exhibit B hereto.

1.2 Compensation.

The Contractor shall be paid a total Not-to-Exceed amount of \$727,500.00 for the total Contract term.

1.3 Term of Contract.

This Contract shall remain in effect for a total term of 60 months or the City terminates the Contract. This Contract may be extended at the City's sole option.

- 1.4 Delivery.** Electronic Delivery shall be made to the following location unless otherwise specified by the City in the order:

Location/Facility Name:	Austin Water
Attn:	Christina Romero
Email address:	Christina.Romero@austintexas.gov

- 1.5 Designation of Key Personnel.** 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 shall promptly notify the City and obtain approval for the replacement. Such approval shall not be unreasonably withheld. The Contractor's and City's key personnel are identified as follows:

	<u>Name</u>	<u>Phone Number</u>	<u>Email Address</u>
Contractor Contract Manager	Lena Pham	215-557-1459	phaml@synario.com
City Contract Manager	<u>Christina Romero</u>	<u>(512)972-0122</u>	Christina.Romero@austintexas.gov
City Contract Administrator, Procurement Specialist	<u>Michelle Rocha</u>	<u>(512) 974-2261</u>	Michelle.Rocha@austintexas.gov

- 1.6 **Invoices.** The City's preference is to have invoices emailed to AWInvoices@austintexas.gov or mailed to the below address:

	City of Austin
Department	Austin Water or AW
Attn:	Accounts Payable
Address	625 E. 10 th Street, Suite 500
City, State, Zip Code	Austin, TX 78701

For questions regarding your invoice/payment please contact the City Contract Manager.

This Contract (including any Exhibits and referenced Documents) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

PFM Solutions LLC

Albert P. Matteo, Jr.

Printed Name of Authorized Person

DocuSigned by:

Albert P. Matteo, Jr

Signature

CF21C72B9554474...

President

Title:

March 24, 2021

Date:

CITY OF AUSTIN

Michelle Rocha

Printed Name of Authorized Person

Michelle Rocha

Digitally signed by Michelle Rocha
Date: 2021.05.10 14:49:00 -05'00'

Signature

Procurement Specialist IV

Title:

March 23, 2021

Date:

Printed Name of Authorized Person

Signature

Title:

Date

EXHIBIT A
CITY OF AUSTIN
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The Contractor agrees that the Contract shall be governed by the following terms and conditions.

1 GENERAL

1.1 TERM OF CONTRACT:

- A. The Contract shall commence upon execution unless otherwise specified and shall continue in effect until all obligations are performed in accordance with the Contract. Upon written notice to the Contractor from the City's Purchasing Officer or designee, the Contract may be extended beyond the initial term at the City's sole option unless the Contractor is notified 30 days prior to the expiration. 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.
- B. Upon expiration of the initial term or any period of extension, the Contractor agrees to holdover under the terms and conditions of this Contract for such a period as is reasonably necessary for the City to re-solicit and/or complete the Deliverables due under this Contract. Any holdover period will not exceed 180 calendar days unless mutually agreed on by both parties in writing.

1.2 INDEFINITE QUANTITY:

The quantities and/or services listed herein are estimates of the goods and services needed by the City for the period of the Contract. The City reserves the right to purchase more or less of these quantities and/or services as may be required during the Contract term. Quantities and/or services will be as needed and specified by the City for each order. Unless specified in the Contract, there are no minimum order quantities.

1.3 INVOICES:

- A. The Contractor shall submit separate Invoices for each Order after each delivery or on the schedule provided in the Contract. If partial shipments or deliveries are authorized by the City, a separate Invoice must be sent for each shipment or delivery made.
- B. Invoices shall be sent to the address on the Purchase Order or Delivery Order in the section entitled, "BILL TO". Proper Invoices must include a unique Invoice number, the purchase Order or delivery Order number, 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 according to pricing structure in the Contract. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the Invoice. The Contractor's name and, if applicable, the tax identification number on the Invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's Invoice. Invoices received without all required information cannot be processed and will be returned to the vendor.
- C. Invoices for labor shall 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.
- D. **Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all** Subcontracting and other authorized expenses at actual cost without markup.
- E. 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.

1.4 PAYMENT:

- A. All proper Invoices received by the City will be paid within 30 calendar days of the City's receipt of the Deliverables or of the Invoice, whichever is later.

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- B. If payment is not timely made, (per Paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code §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 10 calendar days after the grounds for withholding payment have been resolved.
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the Invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. Delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. Third party claims, which are not covered by the insurance which the Contractor is required to provide under the terms of this Contract, are filed or there is reasonable evidence indicating probable filing of such claims;
 - iii. Failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. 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;
 - v. Reasonable evidence demonstrates 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;
 - vi. Failure of the Contractor to submit proper Invoices with all required attachments and supporting documentation; or
 - vii. Failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, §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.
- F. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- G. 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 inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City. 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 notice of non-appropriation.

1.5 FINAL PAYMENT AND CLOSE OUT:

- A. If a Minority-Owned Business Enterprise/Women-Owned Business Enterprise (MBE/WBE) Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project Manager or Contract Manager no later than the 15th calendar day after completion of all work under the Contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.

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- B. The making and acceptance of final payment will constitute:
- i. 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
 - ii. A waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

1.6 SPECIAL TOOLS & TEST EQUIPMENT:

If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this Order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

1.7 AUDITS AND RECORDS:

- A. 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, at the City's expense. The Contractor agrees to refund to the City any overpayments disclosed by any such audit. The City agrees to protect from disclosure Contractor's confidential and proprietary information disclosed during an audit to the same extent it protects its own confidential and proprietary information, subject to the requirements of the Texas Public Information Act, Chapter 2251, Texas Government Code.
- B. Records Retention:
- i. Contractor is subject to City Code Chapter 2-11 (Records Management), and as it may subsequently be amended.
 - ii. The Contractor shall retain all records for a period of three 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.

1.8 FINANCIAL DISCLOSURES AND ASSURANCE:

The City may request and review financial information as the City requires to determine the credit worthiness of the Contractor, including but not limited to, annual reports, audited financial Statements and reports, bank letters of credit or other credit instruments. Failure of the Contractor to comply with this requirement shall be grounds for terminating the Contract.

1.9 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. If 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.

1.10 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

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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.

1.11 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, (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 the Contractor to the City. The City shall be in default if it fails to make payment in accordance with the Payment terms of this Contract.

1.12 TERMINATION FOR CAUSE:

In the event of a default by either party, the non-defaulting party 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 defaulting party, within such 10 day period, cures such default, or provides evidence sufficient to prove to the non-defaulting party's reasonable satisfaction that such default does not, in fact, exist. Additionally, the City shall have the right to act in accordance with the terms defined by "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors." In addition to any other remedy available under law or in equity, either party shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the party as a result of the Contractor's default, including, without limitation, cost of cover, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and not exclusive of any other right or remedy provided by law.

1.13 ATTORNEY'S FEES:

In consideration of the award and execution of this Contract and in consideration of the City's waiver of its right to attorney's fees, the Contractor knowingly and intentionally waives its right to attorney's fees under §271.153, Texas Local Government Code, in any administrative proceeding, alternative dispute resolution proceeding, or litigation arising out of or connected to this Contract.

1.14 TERMINATION WITHOUT CAUSE:

The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon 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.

1.15 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.

1.16 DELAYS:

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

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the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within 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 Clause. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

1.17 FORCE MAJEURE:

Contractor may be excused from performance under the Contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, pandemic, sovereign conduct, or court order provided that the Contractor experiences the event of force majeure and prudently and promptly acts to take any and all steps that are within the Contractor's control to ensure performance and to shorten the duration of the event of force majeure. Contractor shall provide notice of the force majeure event to the City within three (3) business days of the event or delay, whichever occurs later, to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, the City may terminate an order under the Contract if it is determined by the City that the Contractor will not be able to deliver goods or services in a timely manner to meet the business needs of the City.

1.18 INDEMNITY:

A. IN THIS SECTION, THE FOLLOWING TERMS HAVE THE MEANINGS ASSIGNED BELOW:

- i. "INDEMNIFIED PARTY" IS THE CITY AND THE CITY'S OFFICERS, ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS.
 - (1) "INDEMNIFYING PARTY" IS THE CONTRACTOR, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, SUCCESSORS AND ASSIGNS.
 - (2) THE INDEMNIFYING PARTY SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE INDEMNIFIED PARTY AGAINST ANY AND ALL LOSSES, DAMAGES, LIABILITIES, DEFICIENCIES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, SETTLEMENTS, INTEREST, AWARDS, PENALTIES, FINES, COSTS OR EXPENSES, INCLUDING PROFESSIONAL FEES AND ATTORNEYS' FEES, THAT ARE INCURRED BY THE INDEMNIFIED PARTY ARISING OUT OF ANY DIRECT OR THIRD PARTY CLAIM OF:
- ii. BREACH OR NON-FULFILLMENT OF ANY PROVISION OF THIS CONTRACT BY THE INDEMNIFYING PARTY;
- iii. ANY FALSE REPRESENTATION OR WARRANTY MADE BY THE INDEMNIFYING PARTY IN THIS CONTRACT OR IN THE INDEMNIFYING PARTY'S PROPOSAL/RESPONSE LEADING TO THIS CONTRACT;
- iv. ANY NEGLIGENT OR MORE CULPABLE ACT OR OMISSION OF THE INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT, RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT;
- v. BODILY INJURY; DEATH OF ANY PERSON; OCCUPATIONAL ILLNESS OR DISEASE; LOSS OF SERVICES, WAGES, OR INCOME; OR DAMAGE TO REAL OR PERSONAL PROPERTY CAUSED BY THE NEGLIGENT OR MORE CULPABLE ACTS OR OMISSIONS OF INDEMNIFYING PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT; OR
- vi. ANY FAILURE OF THE INDEMNIFYING PARTY TO COMPLY WITH ANY APPLICABLE FEDERAL, STATE, OR LOCAL LAWS, REGULATIONS, OR CODES RELATED TO THE PERFORMANCE OF ITS OBLIGATIONS UNDER THIS CONTRACT.

B. THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION ARE NOT EXCUSED IN THE EVENT A CLAIM IS CAUSED IN PART BY THE ALLEGED NEGLIGENCE OR MORE CULPABLE ACTS OR OMISSIONS OF THE INDEMNIFIED PARTY, INCLUDING ANY RECKLESS OR WILLFUL MISCONDUCT.

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- C. THE INDEMNIFIED PARTY SHALL GIVE THE INDEMNIFYING PARTY WRITTEN NOTICE (A "CLAIM NOTICE") OF ANY CLAIM RECEIVED RELATED TO THIS CONTRACT. THE INDEMNIFYING PARTY'S DUTY TO DEFEND APPLIES IMMEDIATELY. THE INDEMNIFIED PARTY'S FAILURE TO PROVIDE A CLAIM NOTICE TO THE INDEMNIFYING PARTY DOES NOT RELIEVE THE INDEMNIFYING PARTY OF ITS DUTY TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE INDEMNIFIED PARTY.
- D. THE INDEMNIFIED PARTY MAY SELECT ITS OWN LEGAL COUNSEL TO REPRESENT ITS INTERESTS. THE INDEMNIFYING PARTY SHALL:
 - i. REIMBURSE THE INDEMNIFIED PARTY FOR ITS COSTS AND ATTORNEY'S FEES IMMEDIATELY UPON REQUEST, AS THEY ARE INCURRED, AND
 - ii. REMAIN RESPONSIBLE TO THE INDEMNIFIED PARTY FOR ANY LOSSES INDEMNIFIED UNDER THIS SECTION.
- E. THE INDEMNIFYING PARTY SHALL GIVE PROMPT, WRITTEN NOTICE TO THE INDEMNIFIED PARTY OF ANY PROPOSED SETTLEMENT OF A CLAIM THAT IS INDEMNIFIABLE UNDER THIS SECTION. THE INDEMNIFYING PARTY MAY NOT, WITHOUT THE INDEMNIFIED PARTY'S PRIOR, WRITTEN CONSENT, SETTLE OR COMPROMISE ANY CLAIM OR CONSENT TO THE ENTRY OF ANY JUDGMENT REGARDING WHICH INDEMNIFICATION IS BEING SOUGHT UNDER THIS SECTION.
- F. MAINTENANCE OF THE INSURANCE REQUIRED BY THIS CONTRACT SHALL NOT LIMIT THE INDEMNIFYING PARTY'S OBLIGATIONS UNDER THIS SECTION. THE INDEMNIFYING PARTY SHALL REQUIRE ALL SUBCONTRACTORS TO INDEMNIFY THE CITY IN THE SAME MANNER AS PROVIDED IN THIS SECTION.

1.19 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 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. Notices to the Contractor shall be sent to the address registered with the City. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the assigned Procurement Specialist.

1.20 TEXAS PUBLIC INFORMATION ACT:

- A. All material submitted by the Contractor to the City related to the Contract 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.
- B. In accordance with Texas Government Code §552.372, if this Contract has a stated expenditure of at least \$1 million in public funds for the purchase of goods or services by the City or results in the expenditure of at least \$1 million in public funds for the purchase of goods or services by the City in a fiscal year, Contractor agrees to:
 - i. Preserve all Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract;
 - ii. Promptly provide to the City any Contracting information related to the Contract that is in the custody or possession of Contractor on request of the City; and
 - iii. On completion of the Contract, either:
 - (1) Provide at no cost to the City all Contracting information related to the Contract that is in the custody or possession of Contractor; or

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(2) Preserve the Contracting information related to the Contract as provided by the records retention requirements in the AUDITS AND RECORDS Section of the Contract.

- C. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this Contract, and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that Subchapter.

1.21 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.

1.22 ADVERTISING:

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

1.23 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.

1.24 GRATUITIES:

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

1.25 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.

1.26 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.

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1.27 ASSIGNMENT DELEGATION:

The Contract shall be binding upon and ensure 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.

1.28 WAIVER:

The 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.

1.29 MODIFICATIONS:

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

1.30 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.

1.31 DISPUTE RESOLUTION:

- A. 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 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 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 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.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within 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 consider qualified individuals nominated to act as

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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 30 calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center. The parties agree to participate in mediation in good faith for up to 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.

1.32 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, 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.

1.33 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.

1.34 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

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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.

1.35 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.

1.36 NON-DEBARMENT CERTIFICATION:

When using Federal funds, the City of Austin does not Contract with or make prime or sub-awards to parties that are debarred or whose principals are debarred from Federal Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently 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 Contractor shall notify the Procurement Specialist within five business days if they become debarred from doing business with the Federal Government during the term of the Contract.

1.37 EQUAL OPPORTUNITY:

- A. **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.
- B. **Non-Retaliation:** 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.
- C. **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.

1.38 MANDATORY ANTI-ISRAEL BOYCOTT PROVISION:

Pursuant to *Amawi v. Pflugerville Independent School District*, 373 F.Supp.3d 717 (W.D. Texas 2019), the State of Texas is preliminarily enjoined from enforcing this provision. However, if that injunction is lifted, this provision may apply to the Contract:

Pursuant to Texas Government Code §2271.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this Contract.

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- A. For the purposes of this Section only, the terms “company” and “boycott Israel” have the meaning assigned by Texas Government Code §2271.001.
- B. If the Contractor qualifies as a “company”, then the Contractor verifies that he:
 - i. does not “boycott Israel”; and
 - ii. will not “boycott Israel” during the term of this Contract.
- C. The Contractor’s obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2271 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

1.39 PROHIBITION ON LGBTQ+ CONVERSION THERAPY:

The Contractor certifies that it is aware of City Council Resolution No. 20191114-056, which prohibits the City from Contracting with entities that engage in certain practices related to conversion therapy. By accepting this Contract, the Contractor agrees that: (1) its firm and its principals are not currently and will not during the term of the Contract engage in practicing LGBTQ+ conversion therapy; referring persons to a healthcare provider or other person or organization for LGBTQ+ conversion therapy; or Contracting with another entity to conduct LGBTQ+ conversion therapy; and (2) if the City determines in its sole discretion that Contractor has during the term of this Contract engaged in any such practices, the City may terminate this Contract without penalty to the City.

1.40 SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or Subcontractor 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 Subcontractor 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 no later than the 10th calendar day of each month.
- B. 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:
 - i. Require that all Deliverables and services to be provided by the Subcontractor be provided in strict accordance with the provisions, Specifications and terms of the Contract;
 - ii. 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;
 - iii. 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;

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- iv. 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
- v. Require that the Subcontractor follow terms as defined in section, AUDITS AND RECORDS and City Code Chapter 2-11
- C. 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 bylaw.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than 10 calendar days after receipt of payment from the City.

1.41 INSURANCE:

A GENERAL INSURANCE REQUIREMENTS:

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages and endorsements required in Section B., Specific Insurance Requirements, to the City prior to Contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. 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 hold over period is exercised, as verification of continuing coverage.
- ii. All endorsements naming the City as additional insured, waivers, and notices of cancellation shall indicate, and 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
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the 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.
- iv. 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.
- v. The Contractor's and all Subcontractors' insurance coverage shall be written by companies authorized to do business in the State of Texas and have an A.M. Best rating of B+VII or better.
- vi. 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.
- vii. If insurance policies are not written for amounts specified in Section B., Specific Insurance 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.
- viii. The City shall be entitled, at the time of renewal or amendment, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for

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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.

- ix. 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 at the time of renewal or amendment and prudent by the City based upon changes in exposure, statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
 - x. 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.
 - xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions greater than \$499,999 shall be disclosed on the Certificate of Insurance.
 - xii. If any required insurance is written on a claims-made basis, the Certificate of Insurance shall state that the coverage is claims-made and the retroactive date shall be prior to or coincident with the date of the Contract and the coverage continuous and shall be provided for 24 months following the completion of the Contract.
 - xiii. The insurance coverages specified in Section B., Specific Insurance Requirements, are required minimums and are not intended to limit the responsibility or liability of the Contractor.
- B. Specific Insurance Coverage Requirements:** The Contractor, consistent with its status as an independent Contractor shall carry and will cause its Subcontractors to carry, at a minimum 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.
- i. **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.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Form WC420304, or equivalent coverage;
 - b. 30 Days' Notice of Cancellation, Form WC420601, or equivalent coverage.
 - ii. **Commercial General Liability Insurance:** Coverage with minimum bodily injury and property damage per occurrence limits of \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - a. Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project;
 - b. Products/Completed Operations Liability for the duration of the warranty period;
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - a. Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage;
 - b. 30 Day's Notice of Cancellation, Endorsement CG 0205, or equivalent coverage;
 - c. The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

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- iii. **Professional Liability/Technology Errors and Omissions Insurance**: The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.
- iv. **Cyber Liability Insurance**: Coverage of not less than \$1,000,000 each claim and annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

Policy, with the exception of workers compensation, professional liability, and cyber liability, shall be endorsed to name City of Austin, its Affiliates, and their respective directors, officers, employees, and agents, as additional insureds.

- C. **Endorsements**: The specific insurance coverage endorsements specified above, or their equivalents must be provided. If endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

2 SERVICES

2.1 ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES AND/OR SERVICES:

If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables or Services, 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 or Services. 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 or Services. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor within 30 calendar days of notification provided by the City.

2.2 WORKFORCE:

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. 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:
 - i. Illegally use or possess a firearm, except as required by the terms of the Contract; or
 - ii. 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.

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- C. 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 illegally 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.

2.3 GUARANTEE – 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 following the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

- A. 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.
- B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from final acceptance. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with the services warranty 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 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.
- C. 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.



Synario™ Software Subscription Agreement (Enterprise Application)

SERVICE PROVIDER

PFM Solutions LLC ("PFM")
1735 Market Street, 43rd Floor
Philadelphia PA 19103

CUSTOMER

Company Name: City of Austin | Austin Water

Address: 625 E. 10th Street

City: Austin

State: Texas (TX)

Zip Code: 78701

INITIAL TERM

Effective Date: May 11, 2021

Termination Date: May 10, 2026

Months: 60

FEES

FEE	RATE	BASIS	DUE DATE(S)
Licensing	\$123,000	Per Annum (in advance)	May 11, 2021 (annually thereafter on anniversary dates)
Ancillary Services Gold Package – 100 Hours (\$225/hour)	\$22,500	Pre-Paid Package	May 11, 2021 (annually thereafter on anniversary dates)

AUTHORIZED USERS

TYPE OF USER	NUMBER	ADDITIONAL
Power User	9	\$12,500 per additional Power User
Standard	3	\$3,500 per additional Standard User

TERMS AND CONDITIONS

Subscription: PFM shall grant Customer the right to Access the Application, described in **Annex A**.

Services: PFM shall provide Customer with the Services described in **Annex B**.

Taxes: Fees payable to PFM shall not include any taxes that Customer's access to and use of the Application or receipt of Services may be subject.

Users: Customers shall only allow its Authorized Users to access and use Customer's Account.

Limitation on Liability: IN NO EVENT SHALL PFM BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

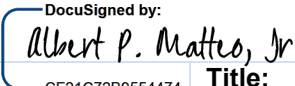
Entire Agreement: Each annex that is attached hereto is incorporated in its entirety into and form a part of this Subscription Agreement (collectively, the "Agreement"). Any capitalized but undefined term herein shall have the meaning given to it in the applicable annex. This agreement: (i) comprises the entire agreement between the parties relating to the subject matter hereof. This Agreement may only be modified by a writing that is manually signed by both parties.

ADDITIONAL TERMS AND CONDITIONS

Customer agrees that in addition to the terms and conditions contained on this page, the terms and conditions as set forth in **Annex C** ("Additional Terms and Conditions"): (i) were read and understood by Customer prior to signing below; and (ii) are incorporated herein by reference as if fully set forth herein. The Additional Terms and Conditions address the following, among others, authorized users, fees, taxes, indemnification, limitation of liability, confidentiality and governing law.

BY SIGNING BELOW, CUSTOMER AGREES TO THE TERMS AND CONDITIONS SET FORTH ON THIS PAGE AND IN THE ADDITIONAL TERMS AND CONDITIONS. This agreement may be executed: (a) in counterparts, both of which taken together shall constitute one simple agreement between parties.

SIGNATURE AUTHORIZATION

SERVICE PROVIDER	Name: PFM Solutions LLC	CUSTOMER	Name: Michelle	Digitally signed by Michelle Rocha Date: 2021.05.10 15:54:33 -05'00'
	Signature: 		Signature: Rocha	
	Print Name: Albert P. Matteo, Jr. <small>CF21C72B9554474...</small>		Print Name:	
	Title: President		Title:	



Annex A to Synario Software as a Service Subscription Agreement Description of Application (Enterprise)

1. **Application.** The “Application”, as defined and used throughout this Agreement, constitutes the configuration of Synario identified in Section 2 of the Subscription Agreement.
 - 1.1.1. “*Enterprise*” shall mean a configuration of Synario by which Customer has access to both the Presentation Interface and the Power User Interface. Customer will have the ability to: (i) design, add, delete, modify, and configure any number of Decks; (ii) design, add, delete, modify, and configure any number of Slides; (iii) design, organize, structure, and configure Customer Data, other data, formulas, and projection logic to: (i) input or import data, assumptions, and Customer Data, (ii) develop financial analysis; (iii) perform scenario and what-if analysis; (iv) construct reports and charts; and (v) display selected reports and charts on Decks and Slides in Presentation Interface.
 - 1.1.2. “*Presentation Interface*” shall mean one or more Decks, comprising one or more Slides constructed on the Synario software to facilitate financial analysis and communicate that analysis to Customer stakeholders. “Decks” constitute collections of Slides, by which Customer and Authorized Users (i) drive analysis; (ii) review and analyze reports, charts, and Customer Data, and (iii) consider other results and output of the Application. “Slides” constitute dashboards and other collections of reports, graphs, charts, tables, and controls, by which Customer and Authorized Users model and interact with the Power User Interface of the Synario software.
 - 1.1.3. “*Power User Interface*” shall mean the developer interface (the “Engine”) of the Synario software in which formulae, relationships, Customer Data, assumptions, and other inputs are organized, structured, configured, imported, and uploaded into a financial model to produce financial analysis. The Power User Interface interacts in real-time with the Presentation Interface to drive and communicate the results of the financial model constructed in the Power User Interface.
2. **Documentation.** PFM may make available to Customer certain Documentation. “Documentation” means PFM’s standard user documentation (that PFM generally makes available to its Application customers), in electronic form, that describes the use, features and operation of the Application. Use of the Documentation is restricted solely to Customer’s use of the Application during the Term and solely for Customer’s internal business purposes. Customer may print or copy the Documentation as needed for its own internal business purposes provided that all copyright notices are included therein. The Documentation shall be considered Confidential Information of PFM. Unless the Documentation is separately referred to herein, all references in this Agreement to the Application shall include the Documentation.
3. **Updates.** The Application, and all references to it in this Agreement, shall include new code related to the Synario platform and new configurations of the Application implemented by PFM to: (i) improve performance, (ii) improve functionality, (iii) fix reported issues, or (iv) modify and revise prior versions or releases of Synario and/or the Application, as well as additions or corrections to Documentation (collectively, “Updates”). PFM reserves the right, in its sole discretion, to make any Updates that it deems necessary or desirable in furtherance thereof.



Annex B to Synario Software as a Service Subscription Agreement Description of Services (Enterprise)

PFM will provide the following services related to the implementation and ongoing use of the Application.

1. Implementation Services. Shall mean the services provided by PFM in connection with the development of the Application to which Customer and Authorized Users have been granted Access, as identified in Section 2 of the Subscription Agreement and described in the Annex A (Description of Application). The Implementation Services comprise:

1.1. Project Management. PFM shall manage the process of implementing the Application, including: (i) developing a mutually-acceptable schedule (the "Schedule") to complete the Implementation Services, (ii) confirming the Authorized Users as defined in the Subscription Agreement and as identified by Customer, (iii) confirming other key stakeholders in the implementation process as identified by Customer (with the Authorized Users, the "Responsible Parties"), (iv) managing access to Synario and the Application, (v) arranging access to all electronic and telephonic meetings and sessions, (vi) managing the flow of information between PFM and Customer, (vii) and providing periodic reports to the Responsible Parties describing progress against the Schedule.

1.2. Phase ONE (Learn). PFM will work collaboratively with Customer to provide:

1.2.1. Initial Data Process. PFM will work collaboratively with Customer to develop and import summary Customer financial data.

1.2.2. Introductory Training. PFM shall provide: (i) the Documentation; and (ii) internet sessions to introduce Customer to the Application, focusing on:

1.2.2.1. For Standard Users:

1.2.2.1.1. Navigation. How to efficiently and effectively navigate the Decks;

1.2.2.1.2. Assumptions. How to set Application assumptions and parameters to drive analysis;

1.2.2.1.3. Analysis. How to conduct sensitivity, scenario, and what-if analysis;

1.2.2.1.4. Visual Content. How to amend the visual content within the Decks and Slides

1.2.2.2. For Power Users, Training will focus on how to add, delete, modify, and manage the projection logic, assumptions, drivers, reports, and charts developed in the Power User Interface.

1.3. Phase TWO (Configure). PFM will work collaboratively with Customer to provide:

1.3.1. Design Process. PFM will work collaboratively with Customer via internet sessions, as needed, to develop specifications for the Application (the "Design Process") and during the Design Process will include Customer preferences as related to the configuration of the Presentation Interface and the Power User Interface (the "Enterprise Design").

1.3.2. Customer Data. PFM will conduct internet sessions, as needed, to describe the Customer Data required for the Application.

1.3.3. Data Importation. PFM will import the Customer Data into the Application.



1.3.4. Configuration Process. PFM will work collaboratively with Customer via internet sessions, and meetings, as needed, to configure the Application to reflect the Enterprise Design in consideration of Customer Data.

1.4. Phase THREE (Deploy). PFM will work collaboratively with Customer via internet sessions, as needed, but all within 6 months of the Effective Date, to provide:

1.4.1. Final Adjustments. Amend the visual content within the Decks and Slides;

1.4.2. Validation. Achieve final agreement that the Application is configured to meet Customer needs;

1.4.3. Transfer of Ownership. Revisit key concepts related to the ongoing development and use of the Application.

2. Ongoing Services. Shall mean the advisory services provided by PFM in connection with the ongoing use of the Application by Customer and Authorized Users, as described in the Standard Terms and Conditions. The Ongoing Services comprise:

2.1. Development Assistance. PFM will provide Customer post-implementation assistance by which PFM personnel answer Customer questions and otherwise direct Customer in how Customer can or should reconfigure the Decks and Application ("Development Assistance"). As requested by Customer, PFM will provide Development Assistance via telephone, Internet and/or email from 9:00 a.m. to 6:00 p.m. Eastern Time, Monday through Friday, except on recognized US holidays. Any request for Development Assistance outside of the times provided in the foregoing sentence shall be on a previously scheduled appointment-only basis as mutually agreed upon by PFM and Customer.

2.2 Forum(s). PFM will provide Customer access to one or more internet portals hosted by PFM on which Customer and other Synario subscribers are provided a platform to exchange insights, use cases, and other information.

2.3 Hosted Discussions. PFM may, in its sole discretion, host discussions, meetings, and sessions, internet-based or otherwise, during which Customer and other Synario subscribers are provided opportunities to exchange insights, use cases, and other information.

2.4 Post-implementation Training. PFM may, in its sole discretion, host training sessions, internet-based or otherwise, during which Synario's features and functionality will be explored.

3 Ancillary Services. Shall mean post-implementation support related to the Application, as requested by Customer. The Ancillary Services comprise: (i) post-implementation modifications, additions, and/or deletions of elements of the Application executed on behalf of Customer by PFM, and (ii) post-implementation training requested specifically by and for Customer. PFM will provide Ancillary Services via telephone, Internet and/or email from 9:00 a.m. to 6:00 p.m. Eastern Time, Monday through Friday, except on recognized US holidays. Any request for Ancillary Services outside of the times provided in the foregoing sentence shall be on a previously scheduled appointment-only basis as mutually agreed upon by PFM and Customer.

4 Customer Responsibilities.

4.2 Application-Development Responsibilities. Customer will actively participate in the Data and Design Processes.

4.3 Training-Related Responsibilities. Customer will: (i) participate in the Introductory Training sessions, and (ii) review the Documentation. **Customer acknowledges that the Training Process is serially dependent on the Data and Design Processes.**

4.4 Data-Related Responsibilities. Customer will provide the Customer Data, as needed, to load the Application in support of the Implementation Services.



Annex C to Synario Software as a Service Subscription Agreement Standard Terms and Conditions

- 1. Subscription.** Subject to these standard terms and conditions ("Terms and Conditions"), PFM hereby grants Customer the right to access and use the Application ("Access") during the Term (defined below), solely for Customer's internal business purposes (the "Subscription"). The Application, and all references to it in these Terms and Conditions, shall also include Updates (as defined in Annex A). The Subscription is subject to, and in consideration of, the full payment of the Licensing Fees owed to PFM as described in the Subscription Agreement.
 - 1.1. Access.** The Application is only accessible via the Internet. Access is only granted to Authorized Users as described below.
 - 1.2. Web Browser.** Customer is solely responsible for observing the then-current minimum web browser requirements that PFM defines from time to time.
- 2. Services.** Subject to these Terms and Conditions, PFM agrees to provide Customer the Services described in Annex B in support of the implementation and ongoing use of the Application. The Services are subject to, and in consideration of, the full payment of the Implementation Fees and Licensing Fees owed to PFM as described in the Subscription Agreement.
- 3. Cooperation.** Customer agrees: (i) to cooperate with PFM in order for PFM to provide Services to Customer; and (ii) to comply with instructions that PFM may provide to Customer in connection with PFM's provision of Services to Customer, and that the provision of certain Services by PFM may be dependent on Customer providing the foregoing cooperation. PFM shall not be responsible or liable for any delay or failure of performance caused in whole or in part by Customer's failure to perform its obligations under these Terms and Conditions.
- 4. Customer Account.**
 - 4.1. Authorized Users.** A Customer account will be created in connection with Customer's use of the Application ("Account"). Customer must not allow anyone other than Customer's authorized users (each an "Authorized User") to access and use Customer's Account. Customer acknowledges and agrees: (i) to keep, and ensure that Authorized Users keep, all Credentials (defined below) secure at all times; (ii) to remain solely responsible and liable for the activity that occurs in Customer's Account, (iii) that the Credentials for each Authorized User may only be used by that Authorized User, and that multiple people may not share the same Credentials; and (iv) to promptly notify PFM in writing if Customer becomes aware of any unauthorized access or use of Customer's Account, any Credentials or the Application.
 - 4.1.1. Standard Users** shall refer to Authorized Users that are granted access to the Presentation Interface of the Application, as described in the Subscription Agreement.
 - 4.1.2. Power Users** shall refer to Authorized Users that are granted access to both the Presentation Interface and the Power User Interface of the Application, as described in the Subscription Agreement.
 - 4.2. Credentials.** For purposes of these Terms and Conditions, "Credentials" means user identification numbers, passwords, security codes, passphrases, security questions, biometrics, personal identification numbers, or other credentials necessary for Customer and its Authorized Users to access the Application and Services, as established by PFM and its third party vendors from time to time.
 - 4.3. Security Devices.** For purposes of these Terms and Conditions, "Security Devices" means Credentials, anti-malware services, out-of-band authentication services, secure tokens and other procedures or technologies required to access a Service, the Application, network or web site. PFM may change the Security Device(s) from time to time. PFM will deliver and/or communicate the Security Device(s) directly to the Permitted Users.
 - 4.4. Unique Credentials.** PFM will assign each Customer and each Authorized User unique Credentials, which must be used when accessing the Application and Services. Authorized Users shall use only their own assigned Credentials when requesting Services and to access the Application.



4.5. **Reliance by PFM.** PFM SHALL BE ENTITLED TO RELY UPON THE AUTHENTICITY OF ANY WRITTEN OR ORAL INSTRUCTION FROM AN AUTHORIZED USER, INCLUDING ANY WRITTEN OR ELECTRONIC SIGNATURE OR USE OF CREDENTIALS BELIEVED BY PFM IN GOOD FAITH TO BE AUTHENTIC AND MADE OR GIVEN BY AUTHORIZEDUSERS.

5. **Restrictions on Use.** Customer shall only access the Application via the PFM designated web portal and in connection with Customer's Account. Customer must not, and shall not allow any Authorized User or third party to: (i) circumvent, disable or otherwise interfere with security-related features of the Application or features that enforce limitations on use of the Application; (ii) violate or abuse password protections governing access to the Application; (iii) allow any third party to use the Application; (iv) sell, rent, lease, license or timeshare the Application or use it in any service bureau arrangement; (v) copy, modify, reverse engineer, decompile, disassemble or derive, or attempt to derive, the source code of, the Application or any components thereof; (vi) use the Application to develop a competing service or product or, directly or indirectly, assist any other individual or entity in developing a competing service or product; (vii) use any automated means to access the Application; (viii) take any action that imposes or may impose, at PFM's sole discretion, a disproportionately large load on the PFM infrastructure; (ix) interfere or attempt to interfere with the integrity or proper working of the Application; (x) remove, deface, obscure, or alter PFM's, or any third party's, copyright notices, trademarks, or other proprietary rights affixed to or provided as part of the Application, or use or display logos of the Application differing from those of PFM; and/or (xi) use the Application in any unlawful manner or in breach of the Agreement. Customer agrees and acknowledges that a violation of this Section is a material breach of the Agreement and that if Customer provides access to the Application to an unauthorized third party, or uses the Application primarily for the benefit of an unauthorized third party, then Customer shall be liable for the payment of an Implementation Fee and Licensing Fee for each such unauthorized third party, in addition to any other remedies available to PFM pursuant to these Terms and Conditions.

6. **Customer Data.**

6.1. **Customer Data.** During the Term, Customer will provide, upload, import, transmit, post, or make accessible to PFM certain data, including financial statements, general ledger information, budget information, and all other data and assumptions required for Customer to use the Application and Services ("Customer Data").

6.2. **License.** Customer grants PFM a non-exclusive license to use, process, display, copy and store the Customer Data in order to provide the Application and Services to Customer.

6.3. **Ownership; Responsibility.** The intellectual property and all other rights, title and interest of any nature in and to the Customer Data are and shall remain the exclusive property of Customer and its licensors. Except as expressly set forth herein, nothing herein shall be construed as transferring any rights, title or interests to PFM or any third party. Customer represents and warrants that: (i) Customer has the right to provide PFM the license granted herein to use such Customer Data in accordance with these Terms and Conditions; and (ii) the Customer Data does not infringe or violate any patents, copyrights, trademarks or other intellectual property, proprietary or privacy or publicity rights of any third party. Customer shall remain solely responsible and liable for the Customer Data and expressly releases PFM from any and all liability arising from PFM's use of the Customer Data as permitted herein.

6.4. **Security.** During the Term, PFM agrees to implement reasonable security measures to protect Customer Data in accordance with applicable industry standards.

6.5. **Backup.** During the Term, PFM will routinely backup Customer Data, however the Application does not operate as an archive or file storage service. Customer is and shall remain solely responsible for maintaining redundant archives of the Customer Data. Customer acknowledges that PFM has no obligation or liability for any loss, alteration, destruction, damage, corruption or recovery of Customer Data.

7. **Title.** The intellectual property and all other rights, title and interest of any nature in and to the Application, and any related content, Documentation (as defined in Annex A) and Services provided or made available by PFM hereunder, including all Updates, are and shall remain the exclusive property of PFM and its licensors. Except as expressly set forth herein, nothing in these Terms and Conditions shall be construed as transferring any rights, title or interests to Customer or any third party. PFM and its licensors reserve any and all rights not expressly granted herein.

8. **Anonymous Information.** PFM may collect, use and publish Anonymous Information (defined below), and disclose it to its third party service providers, to provide, improve and publicize PFM's applications and services. "Anonymous Information" means information about use of the Application, including Customer Data, which does



not enable identification of an individual, such as aggregated and analytics information about use of the Application. PFM owns all Anonymous Information collected or obtained by PFM.

9. Payments. Customer shall pay PFM the fees set forth in the Subscription Agreement in accordance with this Section 9.

- 9.1. **Implementation Fee.** The provision of any “Implementation Services” (as described in Annex B) is subject to Customer’s payment in full of the Implementation Fee set forth in the Subscription Agreement.
- 9.2. **Licensing Fee.** Access to the Application and the provision of any “Ongoing Services” (as described in Annex B) is subject to Customer’s payment in full of the related Licensing Fee for the related subscription period set forth in the Subscription Agreement.
- 9.3. **Ancillary Services Fee.** If Customer requests that PFM provide ancillary services, then PFM will provide such service subject to Customer’s payment in full of the “Ancillary Services Fee” set forth in the Subscription Agreement.
- 9.4. **Expenses.** Customer will reimburse PFM for reasonable transportation, lodging, meal, and out-of-pocket expenses incurred by PFM for travel, as requested by Customer, to any location outside of Philadelphia, Pennsylvania. Customer will be solely responsible for all expenses incurred by Customer personnel in connection with these Terms and Conditions, the Application, and the Services.
- 9.5. **Payment Terms.** All payments hereunder are quoted and shall be paid in United States Dollars. Payments shall be made without any right of set-off or deduction and are irrevocable and (except as expressly set forth herein) nonrefundable. All PFM invoices are due and payable in accordance with the Subscription Agreement. Any amount not paid when required to be paid hereunder shall accrue interest on a daily basis until paid in full at the lesser of: (i) the rate of one and a half percent (1.5%) per month; or (ii) the highest amount permitted by applicable law.
- 9.6. **Taxes.** All fees payable to PFM are exclusive of applicable taxes (including without limitation VAT), withholdings, duties, or other governmental charges (collectively, “Taxes”), and the fees set forth in the Subscription Agreement are the net amounts which PFM shall be paid by Customer hereunder. Customer contemplates that Customer’s access to and use of the Application and receipt of Services will be exempt from all Taxes. If Customer’s access to or use of the Application or receipt of Services is nevertheless determined to be subject to Taxes, Customer shall pay when due all such Taxes assessed or levied against or with respect to the Application or Services.

10. Term, Renewal, and Termination.

- 10.1. **Initial Term.** The Agreement shall be effective upon the Effective Date and shall continue for an initial term as described in the Subscription Agreement (the “Initial Term”).
- 10.2. **Renewal.** Following the Initial Term, the Agreement shall automatically renew at the then-applicable Licensing Fee for successive one-year terms (each a “Renewal Term”, and together with the Initial Term, the “Term”) unless: (i) PFM or Customer provides the other with sixty (60) days written notice prior to the end of any term of its intent not to renew, or (ii) the Agreement is terminated in accordance with Section 10.3 (Termination) below. If Customer continues to use the Application past any renewal date, then Customer shall be deemed to have renewed the Agreement for the following term at the rates applicable for said new term.
- 10.3. **Termination.**
 - 10.3.1. **Material Breach.** Either party may terminate the Agreement with immediate effect if the other party materially breaches the Agreement and such breach remains uncured (to the extent that the breach can be cured) fifteen (15) days after having received written notice thereof.
 - 10.3.2. **Distress Event.** In the event that either party becomes liquidated, dissolved, whether voluntarily or involuntarily, or becomes subject to any bankruptcy or insolvency (or similar) proceeding, or shall take any action to be so declared, the other party shall have the right to immediately terminate the Agreement.
 - 10.3.3. **Suspension.** If PFM believes that Customer is using the Application in a manner that may cause harm to PFM or any third party then PFM may, without derogating from PFM’s right to terminate the Agreement for any breach hereof, suspend Customer’s access to and use of the Service until such time as PFM believes the threat of harm, or actual harm, has passed.



10.4. Effect of Termination.

- 10.4.1. *General.* Upon termination of the Agreement, PFM may disable all access to the Application, and Customer shall immediately discontinue all access and use, including by all Authorized Users, of the Application and shall promptly, but in any event within three (3) days, permanently delete all copies of the Documentation in Customer's possession or control.
- 10.4.2. *Fees.* Customer shall be liable for all amounts due and payable hereunder through the effective date of expiration or termination, as described in the Subscription Agreement, including 100% of all Implementation Fees and the pro-rated amount of the most recently billed Licensing Fees. EXCEPT AS EXPLICITLY PROVIDED HEREIN, CUSTOMER SHALL NOT BE ENTITLED TO A REFUND OF ANY AMOUNTS PREVIOUSLY INVOICED OR PAID.
- 10.4.3. *Access to Customer Data.* Upon termination of the Agreement, Customer will lose all access to any Customer Data that PFM may be storing in order to make available the Application to Customer. It is Customer's responsibility to download its Customer Data prior to termination of the Agreement. Notwithstanding the foregoing, for a period of thirty (30) days from the effective date of termination, PFM will provide Customer, upon Customer's written request, with a reasonable opportunity to download the Customer Data. PFM reserves the right to permanently delete any Customer Data that may be contained in Customer's Account at any time following said thirty (30) day period, and Customer agrees to waive any legal or equitable rights or remedies it may have against PFM with respect to Customer Data that is deleted in connection thereto.
- 10.4.4. *Survival.* This Section 10 and Sections 5 (Restrictions on Use), 7 (Title), 9 (Payments, to the extent any amounts due hereunder remain payable), 11 (Warranty Disclaimer), 12 (Limitation of Liability), 13 (Indemnification), 14 (Confidential Information), 15 (Privacy Policy) and 17 (Independent Contractors) to 21 (General) shall survive termination of the Agreement.

11. Warranty Disclaimer.

Except as expressly set forth herein: (i) the Application and Services are provided on an "as is" basis; and (ii) ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. PFM WILL NOT BE LIABLE OR RESPONSIBLE FOR: (a) ANY TECHNICAL PROBLEMS OF THE INTERNET (INCLUDING WITHOUT LIMITATION SLOW INTERNET CONNECTIONS OR OUTAGES); AND/OR (b) ANY ISSUE THAT IS ATTRIBUTABLE TO CUSTOMER'S HARDWARE OR SOFTWARE OR CUSTOMER'S INTERNET OR DATA SERVICE PROVIDER.

12. Limitation of Liability.

EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL PFM BE LIABLE FOR ANY LOSS OF INCOME, PROFITS, REPUTATION, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES THAT ARISE UNDER THE AGREEMENT OR THAT RESULT FROM THE USE OF, OR THE INABILITY TO USE, THE APPLICATION, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. Indemnification.

- 13.1. PFM hereby agrees to defend and indemnify Customer against any claims made in connection with a third party claim, suit or proceeding that Customer's use of the Application within the scope of the Agreement infringes any third party's intellectual property rights. PFM shall have no obligations or liability hereunder to the extent that the alleged infringement is based on the Customer Data. Without derogating from the foregoing defense and indemnification obligation, if PFM believes that the Application, or any part thereof, may infringe, then PFM may in its sole discretion: (i) obtain at PFM's cost the right of Customer to continue to use the Application; (ii) replace or modify the allegedly infringing part of the Application so that it becomes non-infringing while giving equal or better performance; or (iii) if PFM determines that the foregoing remedies are not reasonably available, then PFM may require that use of the (allegedly) infringing Application (or part thereof) shall cease and in such an event Customer shall receive a refund of all Licensing Fees paid under the Agreement. Except for Customer's claims to insurance policies of PFM to which Customer may also be entitled, this Section states PFM's entire liability and Customer's exclusive remedy for infringement.



- 13.2. The indemnification obligations are subject to: (i) PFM being given prompt written notice of the claim; (ii) PFM being offered immediate and complete control over the defense and/or settlement of the claim, subject to approval by Austin City Council; and (iii) Customer providing cooperation and assistance, at PFM's expense, in the defense or settlement of such claim and not taking any action that prejudices PFM's defense of or response to such claim.

14. Confidential Information. Customer may have access to certain of PFM's non-public and/or proprietary information, in any form or media, including (without limitation) confidential trade secrets and other information related to the Application, other products, software, technology, data, know-how, or business, whether written or oral, and any such other information that, regardless of the manner in which it is furnished and given the totality of the circumstances, a reasonable person or entity should have reason to believe is proprietary, confidential, or competitively sensitive ("**Confidential Information**"). Customer shall take reasonable measures, at least as protective as those taken to protect its own confidential information, but in no event less than reasonable care, to protect PFM's Confidential Information from disclosure to a third party. Customer shall not use or disclose the Confidential Information except as expressly permitted herein or required by applicable law. All right, title and interest in and to Confidential Information is and shall remain the sole and exclusive property of PFM. Subject to applicable law, the terms of the Agreement are considered Confidential Information (although Customer may disclose the terms herein to its advisers and (potential and actual) investors, subject to a confidentiality undertaking). The Customer Data is the confidential information of Customer and PFM shall take reasonable measures to protect the Customer Data, except to the extent that applicable law requires the Customer data to be kept publicly available.

15. Privacy Policy. PFM will not collect any personally identifiable information.

16. Reference Customer. PFM may use Customer's name on its website and in its informational materials to state that Customer is a customer of PFM and Application user, but will not imply that the parties are affiliated.

17. Independent Contractors. The parties are independent contractors. Nothing herein shall create a partnership, joint venture, agency, or employment relationship between the parties. Neither party may make, or undertake, any commitments or obligations on behalf of the other.

18. Assignment. The Agreement and any rights or obligations thereunder may not be transferred or assigned by either party without the prior written consent of the other party, such consent not to be unreasonable delayed or withheld. The Agreement shall be binding upon and inure to the benefit of each party and its respective assigns. Any prohibited assignment shall be null and void. Customer recognizes and approves PFM's server outsourcing to Rackspace Managed Hosting, for server infrastructure, bandwidth, physical server security, hardware and server software maintenance, and server uptime and availability monitoring.

19. Notice. Unless otherwise agreed to by the parties, any notice under the Agreement shall be in writing and addressed and delivered to the other party's address or email set forth in the Subscription Agreement. Notice shall be deemed to have been received by a party: (i) when delivered personally by hand (with written confirmation of receipt); (ii) on the business day sent, if sent by email, receipt confirmation requested, before 5pm (or on the next business day if sent after 5pm); or (iii) on the fifth (5th) business day after which such notice is deposited prepaid in the registered postal system. Either party may change its address for notice purposes upon issuance of notice thereof in accordance with this section.

20. Governing Law and Settlement of Disputes.

- 20.1. The Agreement shall be governed by the laws of the State of Texas without regard to its conflict of laws provisions. The United Nations Convention for the International Sale of Goods shall not apply.
- 20.2. In the event of any dispute arising out of the Agreement, each party agrees to cooperate and negotiate in good faith with the other party in an effort to amicably resolve said dispute. Except as otherwise required by applicable non-waivable law, all disputes arising out of the Agreement shall be subject to, and each party hereby consents to, the sole and exclusive jurisdiction of the competent courts located in Travis County, Texas. Notwithstanding the foregoing, PFM may seek injunctive or other equitable relief in any jurisdiction in order to protect its intellectual property rights.



21. General. The headings used herein are for convenience only and shall in no case be considered in construing the Agreement. Any subscription agreement entered into between the parties shall be deemed to incorporate these Terms and Conditions. If a subscription agreement contains terms that purport to modify or supplement these Terms and Conditions then those subscription agreement terms shall have no force or effect, unless expressly agreed to in writing by both parties. In the case of an inconsistency or contradiction between these Terms and Conditions and any subscription agreement, these Terms and Conditions shall prevail.

EXHIBIT 1 - ADDITIONAL SOFTWARE SECURITY TERMS AND CONDITIONS**1. ADDITIONAL INSURANCE (TECHNOLOGY):**

Professional Liability/Technology Errors and Omissions Insurance: The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, omission, or breach of security (including but not limited to any confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

Cyber Liability Insurance: Coverage of not less than \$1,000,000 each claim and annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

2. DATA SECURITY:

In the course of providing services to the City, the Contractor may gain access to City-owned and City-maintained information. If so, the City and the Contractor desire to keep such information appropriately protected. The Contractor will handle information it receives from the City in compliance with this provision.

A. Definitions. Capitalized terms used in this Section shall have the meanings set forth, below:

“Authorized Persons” means (i) the Contractor’s employees; and (ii) the Contractor's Subcontractors and agents who have a need to know or otherwise access Personal Information to enable the Contractor to perform its obligations under this Contract, and who are bound in writing by confidentiality and other obligations sufficient to protect Personal Information in accordance with the terms and conditions of this Contract.

“Highly Sensitive Personal Information” means an (i) individual's government-issued identification number (including Social Security number, driver's license number, or state-issued identification number); (ii) financial account number, credit card number, debit card number, or credit report information, with or without any required security code, access code, personal identification number, or password that would permit access to an individual’s financial account; or (iii) biometric, genetic, health, medical, or medical insurance data.

“Personal Information” means information provided to the Contractor by or at the direction of the City, information which is created or obtained by the Contractor on behalf of the City, or information to which access was provided to the Contractor by or at the direction of the City, in the course of the Contractor’s performance under this Contract that: (i) identifies or can be used to identify an individual (including, without limitation, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, health, genetic, medical, or medical insurance data, answers to security questions, and other personal identifiers), in case of both subclauses (i) and (ii), including, without limitation, all Highly Sensitive Personal Information.

“Security Breach” means (i) any act or omission that compromises either the security, confidentiality, or integrity of Personal Information or the physical, technical, administrative, or organizational safeguards put in place by the Contractor or any Authorized Persons, or by the City should the Contractor have access to the City’s systems, that relate to the protection of the security, confidentiality, or integrity of Personal Information, or (ii) receipt of a complaint in relation to the privacy and data security practices of the Contractor or any Authorized Persons or a breach or alleged breach of this Contract relating to such privacy and data security practices.

Without limiting the foregoing, a compromise shall include any unauthorized access to or disclosure or acquisition of Personal Information.

B. Standard of Care

- i. The Contractor acknowledges and agrees that, during the term of this Contract, the Contractor may create, receive, or have access to Personal Information. For any Personal Information, the Contractor shall comply with this Section in its creation, collection, receipt, transmission, storage, disposal, use, and disclosure of such Personal Information and be responsible for any unauthorized creation, collection, receipt, transmission, access, storage, disposal, use, or disclosure of Personal Information under its control or in its possession by all Authorized Persons. The Contractor shall be responsible for, and remain liable to, the City for the actions and omissions of all Authorized Persons concerning the treatment of Personal Information.
- ii. Personal Information is deemed to be Confidential Information of the City and is not Confidential Information of the Contractor. In the event of a conflict or inconsistency between this Section and any other Section of this Contract, the terms and conditions of this Section shall govern and control.
- iii. The Contractor agrees and covenants that it shall:
 - a. Keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, or disclosure;
 - b. Not create, collect, receive, access, or use Personal Information in violation of law;
 - c. Use and disclose Personal Information solely and exclusively for the purposes for which the Personal Information, or access to it, is provided pursuant to the terms and conditions of this Contract, and not use, sell, rent, transfer, distribute, or otherwise disclose or make available Personal Information for the Contractor’s own purposes or for the benefit of anyone other than the City, in each case, without the City’s prior written consent; and
 - d. Not directly or indirectly, disclose Personal Information to any person other than Authorized Persons, without the City’s prior written consent.
- iv. The Contractor represents and warrants that its creation, collection, receipt, access, use, storage, disposal, and disclosure of Personal Information does and shall comply with all applicable federal and state privacy and data protection laws, as well as all other applicable regulations and directives.
- v. The Contractor shall implement and maintain a written information security program, including appropriate policies, procedures, and risk assessments that are reviewed and updated at least annually.
- vi. Without limiting the Contractor’s obligations under this Section, the Contractor shall implement administrative, physical, and technical safeguards to protect Personal Information from unauthorized access, acquisition, or disclosure, destruction, alteration, accidental loss, misuse, or damage that are no less rigorous than the National Institute of Standards and Technology (“NIST”) Cybersecurity Framework and shall ensure that all such safeguards, including the manner in which Personal Information is created, collected, accessed, received, used, stored, processed, disposed of, and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Contract.

- vii. If the Contractor has access to or will collect, access, use, store, process, dispose of, or disclose credit, debit, or other payment cardholder information, the Contractor shall, at all times, remain in compliance with the Payment Card Industry Data Security Standard ("PCI DSS") requirements, including remaining aware at all times of changes to the PCI DSS and promptly implementing all procedures and practices as may be necessary to remain in compliance with the PCI DSS, in each case, at the Contractor's sole cost and expense.
- viii. At a minimum, the Contractor's safeguards for the protection of Personal Information shall include: (i) limiting access of Personal Information to Authorized Persons; (ii) securing business facilities, data centers, paper files, servers, backup systems, and computing equipment, including, but not limited to, all mobile devices and other equipment with information storage capability; (iii) implementing network, application, database, and platform security; (iv) securing information transmission, storage, and disposal; (v) implementing authentication and access controls within media, applications, operating systems, and equipment; (vi) encrypting Highly Sensitive Personal Information stored on any media; (vii) encrypting Highly Sensitive Personal Information transmitted over public or wireless networks; (viii) strictly segregating Personal Information from information of the Contractor or its other customers so that Personal Information is not commingled with any other types of information; (ix) conducting risk assessments, penetration testing, and vulnerability scans and promptly implementing, at the Contractor's sole cost and expense, a corrective action plan to correct any issues that are reported as a result of the testing; (x) implementing appropriate personnel security and integrity procedures and practices, including, but not limited to, conducting background checks consistent with applicable law; and (xi) providing appropriate privacy and information security training to Authorized Persons.
- ix. The Contractor shall, at all times, cause Authorized Persons to abide strictly by the Contractor's obligations under this Contract. The Contractor further agrees that it shall maintain a disciplinary/sanctions process to address any unauthorized access, use, or disclosure of Personal Information by any Authorized Person. Upon the City's written request, the Contractor shall promptly identify for the City, in writing, all Authorized Employees as of the date of such request. Upon the City's written request, the Contractor shall provide the City with a network diagram that outlines the Contractor's information technology network infrastructure and all equipment used in relation to fulfilling its obligations under this Contract, including, without limitation: (i) connectivity to the City and all third parties who may access the Contractor's network to the extent the network contains Personal Information; (ii) all network connections, including remote access services and wireless connectivity; (iii) all access control measures (for example, firewalls, packet filters, intrusion detection and prevention services, and access-list-controlled routers); (iv) all backup or redundant servers; and (v) permitted access through each network connection.

C. Security Breach Procedures:

- i. The Contractor shall:
 - a. Provide the City with the name and contact information for an employee of the Contractor who shall serve as the City's primary security contact and shall be available to assist the City 24 hours per day, seven days per week as a contact in resolving obligations associated with a Security Breach;
 - b. Notify the City of a Security Breach as soon as practicable, but no later than 24 hours after the Contractor becomes aware of it; and
 - c. Notify the City of any Security Breaches by telephone at 512-974-1303 and email at kevin.williams@austintexas.gov.
- ii. Immediately following the Contractor's notification to the City of a Security Breach, the parties shall coordinate with each other to investigate the Security Breach. The Contractor agrees to fully cooperate with the City in the City's handling of the matter, including, without limitation: (i) assisting with any investigation; (ii) providing the City with physical access to the facilities and

operations affected; (iii) facilitating interviews with the Contractor's employees, Authorized Persons, and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law, regulation, industry standards, or as otherwise required by the City.

- iii. The Contractor shall, at its own expense, use best efforts to immediately contain and remedy any Security Breach and prevent any further Security Breach, including, but not limited to taking any and all action necessary to comply with applicable privacy rights, laws, regulations, and standards. The Contractor shall reimburse the City for all actual costs incurred by the City in responding to, and mitigating damages caused by, any Security Breach, including all costs of notice and/or remediation.
- iv. The Contractor agrees that it shall not inform any third party of any Security Breach without first obtaining the City's prior written consent, other than to inform a complainant that the matter has been forwarded to the City's Attorney. Further, the Contractor agrees that the City shall have the sole right to determine: (i) whether notice of the Security Breach is to be provided to any individuals, regulators, law enforcement agencies, consumer reporting agencies, or others as required by law or regulation, or otherwise in the City's discretion; and (ii) the contents of such notice, whether any type of remediation may be Offered to affected persons, and the nature and extent of any such remediation.
- v. The Contractor agrees to maintain and preserve all documents, records, and other data related to any Security Breach.
- vi. The Contractor agrees to fully cooperate, at its own expense, with the City in any litigation, investigation, or other action deemed necessary by the City to protect its rights relating to the use, disclosure, protection, and maintenance of Personal Information.
- vii. In the event of any Security Breach, the Contractor shall promptly use its best efforts to prevent a recurrence of any such Security Breach.

3. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):

- A. Access to the Austin Water Department building by the Contractor, all Subcontractors and their employees will be strictly controlled, at all times, by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the Austin Water building at least 30 days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than 20 days after receipt of the Contractor's submittal.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the Contract, the Contractor shall so notify the City's Contract Manager, in writing, within 10 days of the receipt of notification of denial.
- C. Contractor personnel will be required to check in at the security desk when entering or leaving the Austin Water building and security badges must be on display, at all times, when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and Subcontractors are kept fully informed as to these requirements.

4. CONFIDENTIALITY: The Contractor may be granted access to certain of the City's or licensor's confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which City or its licensors consider confidential) (Confidential Information) to provide the Deliverables to the City. The Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information may substantially injure the City and its licensors. The Contractor (including its employees, Subcontractors, agents, or representatives) agrees it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without prior written consent of 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 a court or other governmental or regulatory authority (including a Texas Attorney General opinion) with proper jurisdiction. In all cases, the Contractor agrees to promptly notify the City before disclosing Confidential Information 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 in its business to protect its own most valuable information. In all circumstances, the Contractor's protective measures must be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

- A. Confidential information includes, but is not limited to, all information regarding commercial data, customer information, financial data and projections, pricing proposals, and cost analyses, whether in tangible form or orally or visually conveyed to, or acquired by, the Contractor in the course of its work under the Contract. Confidential Information may be in any medium and may be written or oral.
- B. The Contractor agrees: (i) not to use Confidential Information for any reason other than for the purpose of providing or receiving the Deliverables, (ii) other than as provided herein, not to disclose Confidential Information to any third party other than to its employees who have a need to know the Confidential Information for furtherance of providing the Deliverables, (iii) to the extent practicable and not legally prohibited, to promptly notify City of any request for Confidential Information to be disclosed under any law or Order of any court or other governmental authority with proper jurisdiction, so as to permit City reasonable time to seek an appropriate protective Order, and (iv) to use measures to protect the Confidential Information that are 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.
- C. All Confidential Information and derivations thereof shall remain the sole and exclusive property of City, and no license or other right to the Confidential Information or intellectual property is granted or implied hereby. Upon the written request of City, the Contractor shall promptly return to City all tangible items of Confidential Information furnished by City and all copies thereof or certify in writing that all Confidential Information, including all copies, has been destroyed.
- D. No expiration or termination of the Contract shall affect either party's rights or obligations with respect to Confidential Information.
- E. The parties acknowledge and agree that any breach or threatened breach of the Contract could cause harm for which money damages may not provide an adequate remedy.

The parties agree that in the event of such a breach or threatened breach of the Contract, in addition to any other available remedies, City may seek temporary and permanent injunctive relief restraining the Contractor from disclosing or using, in whole or in part, any Confidential Information.



City of Austin Purchasing Office Sole Source Certificate of Exemption

DATE: January 11, 2020 DEPT: Austin Water
TO: Purchasing Officer or Designee FROM: Christina Romero
PURCHASING POC: IT Purchasing PHONE: 512-972-0122

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than \$50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this sole source request:

- ☒ Items that are available from only one source because of patents, copyrights, secret process, or natural monopolies.
- ☐ Films, manuscripts or books that are available from only one source.
- ☐ Gas, water and other utilities that are available from only one source.
- ☐ Captive replacement parts or components for equipment that are only available from one source.
- ☐ Books, papers and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
- ☐ Management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.

2. Describe this procurement including the following information as applicable:

- What it is for and why it is needed? Synario licensing and ancillary services are for Austin Water to continue to use the Synario Forecast Model. In May 2020, Austin Water began customizing the Synario Forecast Model to meet Austin Water's financial forecasting needs and finished major customization December 2020. Austin Water will need to continue to use the Synario Forecast Model to forecast AW finances into the future, as Synario is proprietary software that only Synario can provide. AW's desires to continue with licensing and financial modeling due to the investment of time, services, and costs of customizing and learning the model to meet AW's financial modeling needs. Austin Water has an annual budget of approximately \$500 million dollars and a five-year CIP of approximately \$1.0 billion dollars. Strategic financial modeling is important for forecast AW finances and affordability strategies.
- What is the municipal purpose that this procurement addresses or furthers?
- Why is the procurement a sole source? AW has worked with PFM Solutions LLC for the past 6 months to configure a specialized Synario Forecast Model to meet AW's financial forecasting needs. PFM Solutions LLC is the sole manufacturer and distributor of Synario software and they retain proprietary intellectual property rights. In addition, the system offers multiple features and functionality that is based on patented technology.
- Has this procurement or a similar procurement been competitively solicited in the past? Yes. MA 7400 PA160000060 was competitively awarded in 2017 through an RFQS for financial advisor services. In 2020, Amendment No. 3 provided AW authority on the contract to work with PFM to configure and implement a customized solution. AW needs to now contract directly with Synario instead of the City's PFM Financial contract authority, since this is a forecast model that AW will be using long-term.
- Why is the vendor the only viable solution? PFM Solutions LLC is the sole manufacturer of Synario software. Austin Water's Forecast Model was developed and configured in the Synario financial modeling software specifically for AW's financial forecasting needs.
- Are there any other alternative solutions? If so, why are those alternatives unacceptable? No. PFM Solutions LLC is the sole manufacturer of Synario software. Austin Water's Forecast Model was developed and configured in the Synario financial modeling software specifically for AW's financial forecasting needs.
- Is there a concern regarding warranty, compatibility, and/or routine safety? No.
- Are there territorial or geographic restrictions for the product distribution and sale? No.
- Are there other resellers, distributors, or dealers in the market? No.
- What other suppliers or products/services were considered? None.
- If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? What is value of buying the addition versus buying all new?
- Is there a way to retrofit another brand? What is this estimated associated cost?
- What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor?
- **Prices were determined to be reasonable based on the following (select all that apply):**
 - ☐ Prices are the same or similar to current City contract.
Notes: **At a minimum, note the City of Austin contract number and title.**
 - ☐ Prices are the same or similar to current contract with another government.
Notes: **At a minimum, note the contract number, title and government that created the contract.**
 - ☐ Prices are on a current and publicly available list price, for the same or similar products,

available to all government and commercial customers.

Notes: **At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).**

- ☐ Prices are established by law or regulation.

Notes: **At a minimum, note the legal or regulatory reference that established the prices.**

- ☒ Other means of determining Price Reasonableness.

Notes: The current proposed licensing fee for the 60-month period is reasonable in comparison to the 2020 one-year licensing fee that was through the City's PFM Financial Advisor contract. AW will be increasing the number of power users, which allows for additional staff to have access in configuring specialized reports/functions and improvements over the term. The additional power users have slightly increased the licensing fee from the previous 2020 one-year contract.

* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

Total for the entire assignment: 5 Years to for a total of \$727,500

Term: 5 Years/60 Months

Effective Date: May 11, 2021

Termination Date: May 10, 2026

Licensing: \$123,000 annually

Ancillary Services: \$22,500 annually

Synario Licensing is for Austin Water to continue to use the Synario Forecast Model. In May 2020, Austin Water began customizing the Synario Forecast Model to meet Austin Water's financial forecasting needs. Austin Water will need to continue to use the Synario Forecast Model to forecast AW finances into the future. PFM has been in business for over 45 years and was founded in 1975 providing independent financial advice as a fiduciary to public entities. In addition, Synario is an agile financial modeling platform that was created to fill a gap in the market for those looking for powerful financial modeling software which offers a full-field view of financial and strategic scenarios inside a robust cloud-based modeling platform.

Austin Water will be using the Synario model for annual forecasting and throughout the year for different scenario modeling that is needed for key decision making. Austin Water has worked with Synario in creating key metrics and reporting that is needed for decision making based on AW information that is imported or manually entered in the Synario model by AW Synario Power Users. AW and Synario worked together on model implementation that began in May 2020 and currently continues. The model implementation consisted of AW goals for the model, areas of sensitivity/projection/use cases, and target report/outputs. Austin Water has the flexibility to adjust line items, assumptions, and formulas in the model. The forecast projections can go out long-term over 30 years. There is flexibility of dashboard presentations of information and the ability to provide multiple scenarios for analysis and comparisons. This Synario model is a robust and stable platform that allows Austin Water the ability for improved financial forecast and analysis. AW has over \$500M in annual revenues and expenses and a \$972M 5-Year CIP Plan. It is imperative that AW has the ability to properly forecast into the future given a changing environment.

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:

- ☒ Scope of Work or Statement of Work or Vendor Proposal
- ☒ Vendor's Quote
- ☐ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
- ☒ Vendor's or Manufacturer's (if vendor is a sole authorized distributor) sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and explain why.

4. Based on the above facts and supporting documentation, the City of Austin has deemed this procurement to be exempt from competitive procurement requirements pursuant to Texas Local Government Code section 252.022(7) and will contract with:

(Vendor Name): PFM Solutions LLC (Synario) for

(Description of Procurement): Austin Water Synario Forecast Model

5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

☐ This is a one-time request for \$_____.

☒ This is a multi-term contract request for 60 (# months for base term) in the amount of \$ 727,500 with 0 (# of renewal options) for \$_____ each for a total contract amount of \$ 727,500.

Recommended Certification	<u>Christina Romero</u>	<u>1/14/2021</u>
	Originator	Date

Approved Certification	Joseph Gonzales	Digitally signed by Joseph Gonzales Date: 2021.01.19 08:31:18 -06'00'	01/19/21
	Department Director or designee (For Austin Energy, Deputy General Manager or designee)		Date

Joseph Gonzales	Digitally signed by Joseph Gonzales Date: 2021.01.19 08:32:19 -06'00'	01/19/21
Assistant City Manager or designee*		Date
(For Austin Energy, General Manager or designee*)		
* Only needed for procurements requiring Council approval)		

Purchasing Office Review	Michelle Rocha	Digitally signed by Michelle Rocha Date: 2021.06.29 17:00:30 -05'00'	
	Authorized Purchasing Office Staff		Date

Purchasing Office Management Review	_____	_____
	Purchasing Officer or designee (If required due to signature authority level)	Date



Memorandum

To: Austin Water

From: Brett Matteo
President
PFM Solutions LLC
1735 Market Street, 43rd Floor
Philadelphia, Pennsylvania 19103

RE: Modeling Intelligence System

Dear Ms. Romero:

This letter confirms that PFM Solutions LLC has unique experience and capabilities to support strategic financial modeling for Austin Water.

Austin Water seeks a software solution designed to facilitate strategic financial modeling across a multi-year planning horizon. Minimum requirements include:

1. Access: (a) Cloud-based access, (b) Multi-user (distributed) environment, (c) Differential user access to software components;
2. Unlimited, user-defined customized components: (a) Projection logic, (b) Reports (GASB-based financial statements, budgets, financial ratios and metrics, other reports), (c) Scenarios, (d) Integrated (live-feed) presentation deck(s), (e) User interface(s) and other assumption drivers;
3. Ability to incrementally and non-destructively change model logic and/or variables to create and compare unlimited alternative scenarios;
4. Drill-down explanations of any projection result;
5. Attribute-based data import capabilities;
6. Audit reports describing changes to the entire model or any sub-component thereof (what was changed, by whom, and when);
7. Pivot-able reports and with unlimited dimensionality; and
8. Pivot-able projection logic.

PFM Solutions LLC provides our **Modeling Intelligence (MI)** system, to which we retain proprietary intellectual property rights. The system offers all of the above features and functionality in a single live version of the model based on **patented technology**.

Please contact me if you have further questions. Thank you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Brett Matteo", written in a cursive style.

Brett Matteo

Sole Source Summary

Unique Technology

- Purpose-built platform designed solely to build, analyze, and present financial models (not budgeting, or accounting)
- Patented “Layering” technology. Allows for unlimited dimensions and scenarios in a single model.
- Formula Building: Synario has pre-built formulas and systems
- Coding - No coding is necessary in Synario. You can do all model building, analysis and presentations using our purpose-built interface.
- Unlike other software applications, no additional IT staffing or administration is necessary. The finance team can build, maintain, and present their models on their own.

Public Utility Experience

- Synario has numerous Public Utility clients including Austin Energy, Midwest Energy Cooperative, and Gainesville Regional Utilities.
 - Our team understands your challenges and can bring knowledge and experience to make recommendations and quickly build the right model for Austin Water.
- Logic and variables pre-built into Synario for the use of Austin Water including Rate revenue, Capital Projects, Debt Service, Ratios, etc. A company/platform that lack expertise in these assumptions and inter-relationships would have to build it and build it correctly the first time.
- User Community – Austin Water will have the ability to leverage Synario’s user community of financial leaders to gain perspective, insights and best practices from similar organizations.
- Online forums for users to interact with each other
- “Inspiration Models” – models built by other schools that you can access for best practices.

Ownership (further expertise)

- Synario is a subsidiary of PFM. PFM is the nation’s leading public finance advisory firm that provides consulting services (Financial Advisory, Alternative Finance, Management and Budget Consulting and more) almost entirely to public entities including Utilities, Healthcare, and Higher Education.

NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

Instruction. Offerors shall read and acknowledge this certification by checking the box below. Offerors that do not check the box below indicating their compliance with this certification shall be determined nonresponsive.



(Check)

OFFEROR HEREBY CERTIFIES

Offeror has read the following and will comply with Austin City Code, Sec. 5-4-2.

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 Non-Discrimination and Non-Retaliation Policy set forth below.

MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICY

1. 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.
2. 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.
3. 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.
4. Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and nonretaliation 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.
5. UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NONDISCRIMINATION 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.
6. Contractor agrees 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.
7. The Contractor agrees that this Non-Discrimination and Non-Retaliation Certificate, 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.

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Michelle Rocha	PM Name/Phone	Christina Romero/(512)972-0122
Sponsor/User Dept.	Austin Water	Sponsor Name/Phone	
Solicitation No	135068	Project Name	Synario Financial Forecasting
Contract Amount	\$727,500	Ad Date (if applicable)	N/A
Procurement Type			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input checked="" type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
Provide Project Description**			
Financial Forecasting Software Subscription Agreement-Synario			
Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.			
Not previously solicited for AWU			
List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)			
9563575 Subscriptions, Software Licensing, Cloud Based 85%; 92045 Maintenance & Support 15%			
Michelle Rocha		2/26/2021	
Buyer Confirmation		Date	

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

FOR SMBR USE ONLY			
Date Received	3/1/2021	Date Assigned to BDC	3/1/2021
In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input checked="" type="checkbox"/> No Goals	

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- | | |
|--|---|
| <input type="checkbox"/> Insufficient availability of M/WBEs | <input type="checkbox"/> No availability of M/WBEs |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input checked="" type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input type="checkbox"/> Sole Source | <input type="checkbox"/> Other |

If Other was selected, provide reasoning:

MBE/WBE/DBE Availability

About 43 certified firms listed on availability list

Subcontracting Opportunities Identified

N/A

Tracy Burkhalter

Tracy Burkhalter 3/1/2021

SMBR Staff

Signature/ Date

Jessica Oberembt

Jessica Oberembt 03.01.2021

SMBR Director or Designee

Date

Returned to/ Date: