ENVESTHUB SOFTWARE SERVICE AGREEMENT
ORDER FORM

1. **Parties and Effective Date.** This EnvestHub Software Service Agreement Order Form (this "**Order Form"**) is entered into by and between: EnvestHub, Inc., a Delaware corporation (the "**Provider"**) and San Jose Federated City Employees' Retirement System and San Jose Police and Fire Department Retirement Plan, each a municipal public retirement system of the City of San Jose, California (together, the "**Customer"**) effective as of the date last signed below (the "**Effective Date"**).

2. **Agreement Framework.** This Order Form incorporates and is governed by the EnvestHub Software Services Agreement Terms and Conditions (the "**Terms and Conditions"**) attached below (together with this Order Form, the "**Agreement"**). Capitalized terms used but not defined in this Order Form have the meanings given in the Terms and Conditions. If there is any conflict or inconsistency between this Order Form and the Terms and Conditions, this Order Form will control solely with respect to the subject matter of such conflict or inconsistency.

3. **Software Service.** Provider's cloud-based software-as-a-service offering provided under this Order Form (the "**Software Service**") is an investment management system that, as of the Effective Date, includes the following core functional capabilities (collectively, the "**Standard Module**"): (a) pipeline management; (b) diligence and approvals; (c) decision auditability; and (d) basic reporting. Provider may offer additional modules and functionalities for a more comprehensive investment management system, including investment operations automation and portfolio management and monitoring (collectively, the "**Comprehensive Module**"). The Comprehensive Module is not included in the Standard Module and is not included as part of this Agreement. The Comprehensive Module may later be made available to Customer under a separate Order Form with separate pricing. The Software Service is hosted by or on behalf of Provider and made available to Customer and its Users via the internet on a subscription basis, subject to the terms of the Agreement.

4. **Order Date; Subscription Period.** The date access to the Software Service for Customers production environment first starts will be July 1, 2026 (the "**Order Date**"). The initial subscription period for the Software Service under this Order Form is twenty-four (24) months beginning on the Order Date (the "**Initial Subscription Period"**).

5. **Software Service Fees.** In consideration for access to and use of the Software Service during the Subscription Period, Customer will pay to Provider an annual subscription fee of twenty-two thousand U.S. dollars (USD **$22,000**) per year, for a total of forty-four thousand U.S. dollars (USD **$44,000**) for the entire Subscription Period (the "Software Service Fees"). The Software Service Fees reflect a discount of approximately fifty-one percent (**51%**) from Provider's standard annual retail price for the Software Service of forty-five thousand U.S. dollars (**USD $45,000**) per year (the "Retail Price"), which discount is extended to Customer in consideration of Customer's commitment to the twenty-four (24) month Subscription Period. Unless expressly agreed otherwise in this Order Form: (a) Software Service Fees are payable annually in advance for each year (or partial year, prorated as applicable) of the Subscription Period; and (b) Software Service Fees are based on Customer's right to use the Software Service as described in this Order Form and are not contingent upon actual usage. Upon renewal following the Initial Subscription Period, Provider may increase the Software Service Fees to an annual subscription fee not to exceed thirty thousand eight hundred U.S. dollars (**USD $30,800**) per year, which renewal price remains a discount from the Retail Price. All Software Service Fees are inclusive of applicable taxes.

6. **Payment Terms.** Provider will issue an invoice for the Software Service Fees annually in advance for each year of the Subscription Period. For the initial Subscription Period, Provider will send Customer an invoice upon or promptly after the Effective Date. Customer will pay each undisputed invoice in full within ninety (90) days from the invoice date. All amounts are in U.S. Dollars (USD), unless otherwise stated in this Order Form.

7. **Renewal.** Following expiration of the Initial Subscription Period, the Agreement may be renewed for successive renewal terms of twelve (12) months each (each, a **"Renewal Period"**) only upon an affirmative election by Customer, which may be effected by either: (i) Customer's written request for renewal delivered to

Provider prior to the expiration of the then-current Subscription Period; or (ii) Customer's payment of Provider's invoice for the applicable Renewal Period issued in advance of such Renewal Period.

8. **Use Limitations; Territory.** The Software Service is made available for Customer's use in connection with its operations in the United States of America, and Customer will not (and will not permit any User or third party to) access or use the Software Service to conduct operations outside the United States, except as expressly authorized in writing by Provider in advance. Incidental access to the Software Service by Users who are temporarily located outside the United States shall not be deemed a violation of this Section. Customer may use the Software Service solely in connection with its investment, fund, manager, co-investment, or similar diligence and pipeline management activities, and not on a service bureau, time-sharing, or outsourcing basis for the benefit of unaffiliated third parties. The maximum number of Users authorized to access the Software Service under this Order Form is [10] (the "**User Limit**"). Customer may not exceed the User Limit without Provider's prior written consent and payment of any additional fees as agreed by the parties.

9. **Technical Support.** Provider will provide technical support to Customer by telephone and electronic mail on business days (Monday through Friday), during the hours of 9:00 a.m. to 5:00 p.m. Pacific time, excluding U.S. federal holidays (the "**Support Hours"**). Customer may initiate a helpdesk ticket at any time by sending an email to Provider support at support@envesthub.com or to such other address as Provider may from time to time designate in writing. Provider will use commercially reasonable efforts to respond to all helpdesk tickets within one (1) business day during Support Hours. Resolution times will vary depending on the nature, severity, and complexity of each issue. Technical support includes: (a) Assistance with access to and use of the Software Service as configured for Customer; (b) Diagnosis and resolution efforts for reproducible errors or failures in the Software Service under normal operating conditions; and (c) Reasonable guidance regarding configuration options and standard features of the Software Service. Provider is not required to provide support relating to: (i) issues caused by Customer's or any third party's networks, systems, or equipment not under Provider's control; (ii) unsupported browsers or devices; or (iii) unauthorized changes to interfaces or integrations.

10. **Service Level Agreement (SLA).** The Software Service will be available at least ninety-nine and nine-tenths percent (99.9%) of the time in each calendar month, measured on a calendar-month basis (the "**Uptime Commitment"**), excluding the permitted exclusions specified below.

    10.1 **Exclusions from Uptime Calculations.** The following are excluded from both uptime and downtime calculations: (a) Scheduled maintenance windows for which Provider has notified Customer in advance, including but not limited to major upgrades and infrastructure maintenance; (b) Any periods during which Customer requests or consents to maintenance or testing activities that affect availability; (c) Downtime or degradation caused by Customer or any third party's equipment, software, or network connectivity not provided or controlled by Provider; (d) Downtime or degradation resulting from force majeure events or other causes beyond Provider's reasonable control (including, without limitation, failures of public internet, data center hosting providers, or utilities); and (e) Downtime resulting from Provider's good faith actions reasonably necessary to address security incidents, violations of the Agreement by Customer or its Users, or other unlawful or harmful activities.

    10.2 **Service Credits.** If, in any calendar month, Customer experiences downtime of the Software Service aggregating more than eight (8) hours (excluding permitted exclusions), then, Provider will issue to Customer a service credit equal to five percent (5%) of the Software Service Fees attributable to that calendar month for each additional period of sixty (60) or more consecutive minutes of such downtime, provided that: (a) No more than one (1) such credit will accrue per calendar day; and (b) In no event will total credits in any calendar month exceed an amount equal to one (1) week of the Software Service Fees attributable to that calendar month. Downtime will be deemed to begin when the Software Service becomes unavailable to Customer and will continue until the Software Service is restored to an available state for Customer in material conformity with this Agreement.

    10.3 **Credit Claim Process.** To receive a service credit, Customer must notify Provider in writing of the relevant downtime event within twenty-four (24) hours from the time the downtime was first experienced. Failure to provide timely notice will forfeit Customer's right to claim a service credit for that event. Service credits: (a) will be applied against the Software Service Fees for the month following the month in which the credit is earned (or, if the Subscription Period has ended, will be paid out or otherwise addressed as the parties may agree); (b) may not be redeemed for cash; and (c) are not transferable to any other agreement or customer, except with Provider's prior written consent.

10.4 **No Additional Remedies.** Provider's blocking of data communications or other service in accordance with its security policies, documented acceptable use restrictions, or the Agreement will not be deemed unavailability or downtime and will not give rise to service credits or other remedies under this SLA.

11. **Professional Services.**

11.1 **Included Professional Services.** As part of the Software Service subscription under this Order Form, Provider will provide the following professional services to Customer (collectively, the "**Included Professional Services"**): (a) One-time setup of Provider's Software Service platform for Customer with customer-specific configurations; (b) Reasonable ongoing support for training and educational purposes to enable Customer's use of the Software Service.

11.2 **Fees for Included Professional Services.** The Included Professional Services are provided at no additional charge to Customer for the Initial Subscription Period only. Upon any renewal of the Subscription Period, the provision of professional services will be subject to Provider's then-current professional services rates or such other rates as the parties may agree in writing.

11.3 **Additional Professional Services.** Any professional services requested by Customer and agreed by Provider that are outside the Included Professional Services (such as complex custom configurations, bespoke integrations, extensive data migration, or custom reporting) will be subject to a separate written statement of work, order form, or amendment, including associated fees, payment terms, and project-specific terms. Unless otherwise agreed, such additional professional services will be provided on a time-and-materials basis at Provider's then-current professional services rates or such other rates as the parties may agree in writing.

11.4 **Customer Cooperation.** Customer will provide timely and reasonable cooperation and assistance to enable Provider to perform the Included Professional Services and any additional professional services, including: (a) Providing accurate and complete Customer Content, data samples, and configuration requirements; (b) Providing access to appropriate Customer personnel with knowledge of Customer's processes and systems; and (c) Making timely decisions and approvals reasonably required for Provider's performance. Provider is not responsible for any delay, increased cost, or inability to perform professional services caused by Customer's failure to cooperate as reasonably requested.

12. **Customer Primary Contact.** Customer designates the following primary business contact for day-to-day matters relating to the Software Service, including their name, title, email, and phone:

    David Aung, Investment Officer
    david.aung@sanjoseca.gov
    (408) 794-1046

13. **Notices.** The Notice Address for formal notices under the Agreement will be as set out in the signature blocks below and may be updated from time to time.

14. **Counterparts.** Execution of this Order Form is governed by Section 12.12 of the Terms and Conditions.

[Signatures on following page]

By signing below, each party acknowledges that it has read this Order Form and the attached Terms and Conditions, understands them, and agrees to be bound by them.

PROVIDER: ENVESTHUB, INC.

By: Nima Shah

Name: Nima Shah

Title: Chief Executive Officer

Notice Address: 2883 Hopyard Road, Suite 1047, Pleasanton, CA 94588

Date: June 26, 2026

CUSTOMER:
San Jose Federated City Employees' Retirement System and San Jose Police and Fire Department Retirement Plan

By:

Name: John Flynn

Title: Chief Executive Officer

Notice Address: City of San Jose Office of Retirement Services
1737 North First Street, Suite 600
San Jose, CA 95112
ret.investments@sanjoseca.gov

Date: June 26, 2026

Approved as to Form:

By: Natalie N. Wilson

Natalie N. Wilson, Hanson Bridgett LLP

ENVESTHUB SOFTWARE SERVICE AGREEMENT
TERMS AND CONDITIONS

1. **Definitions; Interpretation.**

1.1 **Definitions.** In addition to capitalized terms defined elsewhere in this Agreement, the following terms have the meanings set out in this Section 1.1:

a. **“Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with a party, where control means ownership of more than fifty percent (50%) of the voting securities or other ownership interest of such entity.
b. **“Agreement”** means this EnvestHub Software Services Agreement, consisting of the Order Form(s) and these Terms and Conditions, together with any exhibits, schedules, or written amendments executed by both parties.
c. **“Applicable Data Protection Laws”** means all data protection and privacy laws and regulations applicable to the processing of Personal Data under this Agreement, which may include, where applicable, the General Data Protection Regulation, the California Consumer Privacy Act, and similar laws.
d. **“Applicable Laws”** means all laws, rules, regulations, ordinances, and other binding requirements of governmental authorities that apply to or govern a party’s performance or exercise of its rights under this Agreement.
e. **“Beta Product”** means any feature, functionality, or version of the Software Service that is designated or described by Provider as beta, early access, preview, or any similar term, or that is otherwise not made generally available by Provider to its customer base.
f. **“Software Service”** means the hosted software-as-a-service offering described in the applicable Order Form, including any improvements, updates, and modifications thereto that Provider makes available to Customer during the Subscription Period, but excluding any separate professional services or third-party products.
g. **“Confidential Information”** means all non-public information, in any form, that is disclosed by or on behalf of one party (the “**Discloser”**) to the other party (the “**Recipient”**) in connection with this Agreement and that is (A) identified as confidential or proprietary at the time of disclosure or within a reasonable period thereafter, or (B) should reasonably be understood to be confidential or proprietary given the nature of the information and the circumstances of disclosure. Confidential Information includes, without limitation, the existence and terms of this Agreement, business plans, financial information, product roadmaps, technical information, security information, Customer Content (as to Customer), and non-public information regarding the Software Service and Software (as to Provider). Confidential Information does not include information that falls within one of the exclusions in Section 10.2.
h. **“Customer Content**” means any data, information, documents, files, or other content that Customer or its Users submit to or store in the Software Service, but excluding Feedback and Usage Data.
i. **“Documentation”** means the user guides, technical documentation, and other written or electronic materials for the Software Service or Software that Provider makes generally available to its customers, as updated from time to time.
j. **“Fees”** means the amounts specified in an Order Form or other ordering document executed by the parties for access to and use of the Software Service and for any professional services.
k. **“Force Majeure Event”** means any event or circumstance beyond the reasonable control of the affected party, including natural disasters, acts of war, terrorism, riots, labor disputes (excluding disputes involving that party’s own workforce), failures of public utilities or internet services, or governmental actions, provided that such party has taken commercially reasonable measures to avoid or mitigate the effects of such event.
l. **“High Risk Activity”** means any activity in which the use or failure of the Software Service could reasonably be expected to lead to death, bodily injury, or severe environmental or property damage, such as the operation of life-support systems, air traffic control, nuclear facilities, or similar high-risk environments.

m. **“Order Form”** means a cover page, order form, statement of work, or similar document executed by the parties that references this Agreement and sets forth the specific Software Service subscriptions, Subscription Period, Fees, and other transaction-specific terms.
n. **“Personal Data”** has the meaning given to personal data, personal information, personally identifiable information, or similar terms under Applicable Data Protection Laws, to the extent such data is processed in connection with the Software Service.
o. **“Product”** means, collectively, the Software Service, the Software (if any), and the Documentation.
p. **“Prohibited Data”** means: (i) protected health information governed by the Health Insurance Portability and Accountability Act; (ii) payment card numbers, bank account numbers, and similar financial account identifiers; (iii) government-issued identification numbers such as social security numbers and driver’s license numbers; (iv) special categories of data as defined in the General Data Protection Regulation; and (v) any other category of sensitive personal information that Applicable Data Protection Laws designate as requiring enhanced security measures or heightened protection.
q. **“Subscription Period”** means, for each Order Form, the period identified in such Order Form during which Customer is authorized to access and use the Software Service, including any Renewal Periods.
r. **“Software”** means any client-side software, plug-ins, mobile applications, or other code that Provider makes available for download or installation by Customer or its Users in connection with access to or use of the Software Service.
s. **“Usage Data”** means technical and operational data generated from or relating to Customer’s and its Users’ use of the Software Service, including logs, performance statistics, and aggregated utilization metrics, but excluding Customer Content and any data that identifies Customer or its Users directly (except to the extent anonymized or aggregated).
t. **“User”** means an individual who is authorized by Customer to access and use the Software Service under Customer’s account for Customer’s benefit, including Customer’s employees, independent contractors, and other personnel.

1.2 **Interpretation.** Headings are for convenience only and do not affect interpretation. The words include, includes, and including are deemed to be followed by without limitation. References to sections are to sections of these Terms and Conditions unless otherwise indicated. In the event an Order Form omits a Variable or defined term that is referenced in these Terms and Conditions, the corresponding provision will be deemed inapplicable to that Order Form.

2 **Service; Access and Use.**

2.1 **Grant of Access.** Subject to the terms and conditions of this Agreement and payment of the applicable Fees: (a) For each Order Form, during the applicable Subscription Period, Provider grants to Customer a limited, non-exclusive, non-transferable (except as expressly permitted under Section 12.5), non-sublicensable right for Customer and its Users to access and use the Software Service solely for Customer’s internal business purposes, within the scope and any limitations specified in the applicable Order Form. (b) Provider grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable license during the applicable Subscription Period to install and use any Software solely as necessary to enable Customer and its Users to access and use the Software Service under this Agreement and in accordance with the Documentation.

2.2 **Affiliates.** Customer’s Affiliates may access and use the Software Service as Users under Customer’s account if permitted by the applicable Order Form. If a Customer Affiliate executes its own Order Form with Provider, such Affiliate will be deemed a separate Customer under this Agreement, and Customer will not be responsible for that Affiliate’s obligations unless expressly agreed in writing.

2.3 **Support.** During the Subscription Period, Provider will provide technical support for the Software Service in accordance with the support terms set out in the applicable Order Form and in these Terms and Conditions.

2.4 **User Accounts and Security.** Customer is responsible for all actions taken using the accounts and credentials associated with Customer’s subscription, whether by Users or by any other person who gains access using such accounts or credentials, except to the extent caused primarily by Provider’s breach of Section 3. Customer and its Users must maintain the confidentiality and security of all usernames, passwords, and other login credentials. Customer will promptly notify Provider if Customer believes that any password or account has been compromised, or if there is any suspected unauthorized access to the Software Service using Customer's accounts.

2.5 **Feedback and Usage Data.** Customer may, but is not obligated to, provide suggestions, feedback, or ideas regarding improvements or modifications to the Product or related services (collectively, "**Feedback**"). Customer provides all Feedback as-is and, to the maximum extent permitted by Applicable Laws, without warranties or conditions of any kind. Provider may freely use, copy, disclose, license, and otherwise exploit Feedback for any purpose without any obligation, payment, or restriction to Customer, and Customer hereby assigns to Provider all right, title, and interest it may have in and to such Feedback. Provider may collect, analyze, and use Usage Data to maintain, operate, improve, and enhance the Product and Provider's other products and services and for related business purposes. Provider may disclose Usage Data only in aggregated or de-identified form that does not identify Customer or any individual.

2.6 **Customer Content.** As between the parties, Customer retains all right, title, and interest in and to Customer Content, subject to the rights granted to Provider in this Agreement. Customer grants to Provider a non-exclusive, worldwide, royalty-free license during the Subscription Period, and for the period thereafter reasonably necessary for Provider to wind down its obligations under this Agreement, to host, store, copy, display, transmit, and otherwise process Customer Content solely as necessary to provide, maintain, and secure, the Product and any related support services. Customer is solely responsible for the accuracy, quality, and legality of Customer Content and the means by which Customer acquires and uses Customer Content, and for ensuring that Customer Content does not violate this Agreement or Applicable Laws.

2.7 **Generative Artificial Intelligence Technology Use & Reporting.** During the term of the Agreement, the Provider must notify the Customer in writing if the Provider's services or any work under this Agreement includes or makes available any generative artificial intelligence technology ("**GenAI**"), including GenAI from third parties or subcontractors. Such notice will include a general description of the nature and scope of such GenAI use to the extent it is used to generate, process, or materially affect Customer Content, system functionality, or outputs provided to Customer. Upon Customer's reasonable request, Provider will provide additional information regarding its use of GenAI under this Agreement sufficient to allow Customer to evaluate relevant operational, confidentiality, and data protection considerations. If Customer reasonably objects to Provider's use of GenAI as described in such notice, the parties will work in good faith to address such concerns, including, where reasonably feasible, by disabling or limiting the application of such GenAI functionality to Customer's use of the Software Service. Without limiting the foregoing, Provider will not use Customer Content to train, develop, or improve any GenAI without Customer's prior written consent. Provider will process Customer Content in connection with any GenAI in a manner consistent with maintaining segregation from other customers' data and will not commingle Customer Content with data of other customers. Provider remains fully responsible for all services, outputs, and deliverables under this Agreement, including any use of GenAI, and such use will not reduce or limit Provider's obligations with respect to performance, confidentiality, data protection, or compliance with Applicable Laws under this Agreement.

3 **Customer Responsibilities and Restrictions.**

3.1 **Use Restrictions.** Except as expressly permitted in this Agreement, Customer will not, and will not permit any User or third party to:

a. Reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code, underlying ideas, algorithms, or structure of the Software Service or Software, except to the limited extent that Applicable Laws expressly prohibit such restriction;
b. Copy, modify, translate, adapt, or create derivative works of the Product or any part thereof;
c. Rent, lease, sell, assign, distribute, sublicense, or otherwise transfer or make the Product available to any third party, including on a time-sharing, service bureau, or other hosting basis;
d. Remove, alter, or obscure any proprietary or other notices (including copyright and trademark notices) on or in the Product;
e. Access or use the Product in a manner intended to (i) circumvent any usage limitations, security measures, or access controls; (ii) test or probe the security or vulnerability of the Product without

Providers prior written consent; or (iii) interfere with or disrupt the integrity or performance of the Product or data of any other customer;

f. Access or attempt to access accounts, data, or information of any other customer or user of the Product to which Customer does not have expressly authorized access;
g. Use the Product to create a competing software or service, or for benchmarking or competitive analysis except as permitted by Applicable Laws;
h. Use the Product in connection with any High Risk Activity or in violation of Applicable Laws;
i. Upload, post, store, or transmit to or through the Product any Customer Content or other materials that are unlawful, infringing, defamatory, offensive, or otherwise violate the rights of any third party; or
j. Use the Product in any manner or for any purpose that is inconsistent with the Documentation, any Use Limitations in the applicable Order Form, or this Agreement.

3.2 **Use Limitations; Users.** Customer will ensure that all use of the Product by its Users complies with this Agreement and will be responsible for all acts and omissions of its Users. Customer's access to and use of the Software Service is subject to any quantitative or qualitative limitations specified in the applicable Order Form, such as limits on number of Users, volume of data, or geographic territory. Customer will not exceed such limitations without Provider's prior written consent and payment of any additional Fees as agreed by the parties. Except as expressly set forth in the applicable Order Form, Customer's use of the Software Service is not subject to any predefined limits on the volume of Customer Content that may be stored within the Software Service. Provider will not impose additional fees, suspend access, or require deletion of Customer Content based on volume of data stored, unless otherwise expressly agreed in writing by the parties.

3.3 **Suspension of Access.** Provider may temporarily suspend Customer's and its Users' access to the Software Service, in whole or in part, immediately upon notice (or, where practicable, upon prior notice and after providing Customer with a reasonable opportunity to cure) if: (a) Any undisputed Fees owed by Customer under this Agreement remain unpaid more than thirty (30) days after the due date; (b) Customer or any User violates Section 3.1 or otherwise uses the Product in a manner that Provider reasonably believes may (i) pose a security or legal risk to the Product or any third party, (ii) adversely impact the functionality, performance, or integrity of the Product, or (iii) subject Provider or any third party to liability; or (c) Provider is required to do so by Applicable Laws or by a governmental authority with appropriate jurisdiction. Provider will reinstate access promptly after the underlying grounds for suspension have been remedied to Provider's reasonable satisfaction.

4 **Privacy, Security, and Prohibited Data.**

4.1 **Data Processing and Data Protection.** To the extent that Provider processes Personal Data on behalf of Customer in connection with providing the Software Service, Provider will do so as Customer's processor or service provider and will implement commercially reasonable technical and organizational measures to protect such Personal Data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure, or access. Provider shall ensure and maintain the confidentiality, security, safety, and integrity of such Personal Data and other Customer Content through physical, electronic, and procedural safeguards designed to prevent unauthorized access or use and to protect against known or reasonably anticipated threats to the security or integrity of such data. If Applicable Data Protection Laws require that the parties execute a separate data processing agreement, the parties will enter into such an agreement, which will supplement and, in case of conflict regarding Personal Data, supersede this Agreement.

4.2 **Security Measures.** Provider will use commercially reasonable efforts to secure the Software Service from unauthorized access, alteration, or use and other unlawful tampering, including industry-standard administrative, technical, and physical safeguards. Without limiting the foregoing, Provider will maintain policies and programs designed to prohibit unauthorized disclosure of Customer Content and Personal Data and to promote training and awareness of its information security policies and practices among its employees, representatives, agents, and subcontractors. Provider will maintain reasonable administrative, physical, and technical safeguards for the protection of the security, confidentiality, and integrity of Customer Content and Personal Data, including, as applicable to the Software Service, access controls, user credentials and strong passwords, encryption during transmission and at rest, firewall protections, vulnerability management practices, and application of relevant security patches and updates. Provider will maintain, or cause its hosting providers to maintain, security assessments or certifications, which as of the Effective Date includes SOC 2 Type I, SOC 2 Type II, and periodic penetration testing, and Provider will use commercially reasonable efforts to maintain security certifications consistent with industry standards for comparable software-as-a-service providers throughout the Subscription Period. Upon written request and subject to reasonable confidentiality and security restrictions, Provider will make available copies of such reports to Customer. Upon reasonable prior written request and subject to Provider's confidentiality, security, and access control requirements, Provider will also make available such additional information regarding its security practices and procedures as is reasonably necessary for Customer to verify Provider's compliance with this Section 4, including relevant summaries of business continuity, disaster recovery, and vulnerability management practices.

4.3 **Prohibited Data.** Customer will not, and will not permit any User or third party to, submit or cause to be submitted any Prohibited Data to the Software Service, except as explicitly authorized in an Order Form or written amendment signed by both parties. Provider has no obligation and assumes no responsibility to monitor Customer Content to determine whether it includes Prohibited Data. However, if Provider becomes aware that Prohibited Data has been stored in the Software Service in violation of this Section 4.3, Provider may delete or anonymize such Prohibited Data and may suspend the affected portion of the Software Service, after providing notice to Customer where reasonably practicable and giving Customer a reasonable opportunity to remediate, if remediation is reasonably feasible under the circumstances.

4.4 **Data Incidents.** In the event of any confirmed unauthorized access to or disclosure of Customer Content within Provider's or its subprocessors' systems (a "**Data Incident**"), Provider will: (a) Notify Customer without unreasonable delay after confirming the Data Incident, and in any event no later than forty-eight (48) hours after such confirmation; (b) Provide Customer with reasonably available information about the nature and scope of the Data Incident, subject to any confidentiality or security obligations and law enforcement requests; and (c) Take commercially reasonable steps to contain, investigate, and remediate the Data Incident and to prevent recurrence. Provider will also take commercially reasonable actions necessary to preserve relevant forensic evidence relating to the Data Incident and will cooperate with Customer in good faith by providing information reasonably necessary for Customer to assess the nature and scope of the Data Incident and to comply with Applicable Laws.

5 **Fees, Payment, and Taxes.**

5.1 **Fees.** Customer will pay Provider the Fees set forth in each applicable Order Form in accordance with this Agreement. Except as expressly provided in this Agreement, all Fees are non-refundable and non-cancelable.

5.2 **Invoicing; Payment Terms.** Provider will invoice Customer for the Software Service Fees and for any professional services in accordance with the Order Form. Unless otherwise specified, (i) recurring subscription Fees are invoiced in advance, and (ii) time-and-materials professional services Fees are invoiced monthly in arrears. Customer will pay all undisputed Fees within the payment period specified in the Order Form. If no payment period is specified, Customer will pay all undisputed amounts within sixty (60) days after the invoice date.

5.3 **Disputed Amounts.** If Customer disputes any invoiced Fees in good faith, Customer must notify Provider in writing of the dispute and the basis for it before the applicable due date (or within thirty (30) days of an automatic charge, if applicable), and must pay all undisputed Fees when due. The parties will work together in good faith to resolve any such dispute within fifteen (15) days. Any amounts determined to be validly owed will be paid within ten (10) days after resolution.

5.4 **Late Payments.** Any undisputed Fees not paid when due may accrue interest at a rate equal to the lesser of (a) one and one-half percent (1.5%) per month, or (b) the maximum rate permitted by Applicable Laws, from the due date until paid in full. Customer will reimburse Provider for reasonable costs of collection (excluding attorney's fees, unless awarded by a court of competent jurisdiction) incurred in collecting past-due undisputed amounts.

5.5 **Taxes.** Fees payable under this Agreement do not include any applicable sales, use, value-added, goods and services, or similar taxes (collectively, "**Taxes**"). Customer is responsible for all Taxes imposed on the Fees (excluding taxes based on Provider's net income). If Provider is required to collect Taxes, Provider will invoice Customer for such Taxes and Customer will pay them, unless Customer timely provides a valid tax exemption certificate.

5.6 **No Setoff.** Customer may not withhold, set off, or deduct any amounts from Fees owed under this Agreement, except to the limited extent required by applicable withholding tax laws or as expressly permitted by Section 5.3.

6 **Term and Termination.**

6.1 **Term of Agreement.** This Agreement begins on the Effective Date of the earliest Order Form between the parties that references these Terms and Conditions and continues until all Subscription Periods and all Order Forms have expired or have been terminated in accordance with this Section 6.

6.2 **Subscription Periods; Renewals.** Each Subscription Period for the Software Service will commence and renew (if applicable) as set out in the relevant Order Form and subject to this Agreement. Nothing in this Agreement will be deemed to require automatic renewal of any Subscription Period.

6.3 **Termination for Material Breach.** Either party may terminate this Agreement or any affected Order Form, in whole or in part, upon written notice to the other party if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receiving written notice describing the breach in reasonable detail, except that cure periods may be shorter where expressly stated in this Agreement. Without limiting the foregoing, a breach of Section 4 (Privacy, Security, and Prohibited Data) or Section 10 (Confidentiality) will be deemed a material breach of this Agreement.

6.4 **Termination for Insolvency or Cessation of Business.** Either party may terminate this Agreement immediately upon written notice to the other party if the other party: (a) becomes insolvent or is generally unable to pay its debts as they become due; (b) files or has filed against it a petition for bankruptcy or similar relief, which is not dismissed within sixty (60) days; (c) makes an assignment for the benefit of creditors; or (d) ceases to conduct business in the ordinary course without a successor.

6.5 **Termination for Force Majeure.** If a Force Majeure Event prevents Provider from materially performing its obligations with respect to the Software Service under an Order Form for a continuous period of thirty (30) or more days, Customer may terminate the affected Order Form upon written notice. In such case, Provider will refund to Customer a prorated portion of any prepaid, unused Software Service Fees for the period following the effective date of termination under the terminated Order Form.

6.6 **Effect of Termination or Expiration.** Upon expiration or termination of an Order Form or this Agreement for any reason: (a) Customer's right to access and use the Software Service under the terminated Order Form will immediately cease, and Provider may disable related accounts, except as necessary to facilitate any transition assistance described below; (b) Upon Customer's written request made at any time during the Subscription Period and for sixty (60) days after the effective date of termination or expiration, Provider will make available to Customer a complete export of Customer Content in a commonly used, machine-readable electronic format, including Customer data, documents, and associated metadata reasonably necessary to enable Customer to use or migrate such Customer Content in another system; (c) Following Customer's confirmation that such export has been successfully completed, or upon expiration of the foregoing request period if Customer does not request export, Provider may delete Customer Content in accordance with its standard data retention and deletion practices, subject to Applicable Laws. Upon Customer's written request, Provider will certify that such deletion has been completed; (d) Upon Customer's reasonable written request, Provider will provide reasonable cooperation to facilitate Customer's transition, including responding to reasonable information requests relating to the exported Customer Content; (e) Each Recipient will return or destroy the Discloser's Confidential Information in its possession or control, subject to Section 10.4; and (f) Customer will pay Provider all Fees accrued and payable under the Agreement up to the effective date of termination or expiration, in accordance with Section 5.

6.7 **Survival.** The following provisions survive expiration or termination of this Agreement: Sections 1, 2.5, 2.6, 2.7, 3, 4, 5 (for amounts accrued but unpaid), 6.6, 6.7, 7, 8, 9, 10, 11, 12, and any others which by their nature are intended to survive.

7 **Representations, Warranties, and Disclaimers.**

7.1 **Mutual Representations and Warranties.** Each party represents and warrants to the other that: (a) It is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization; (b) It has full power and authority to enter into this Agreement and to perform its obligations hereunder; and (c) The execution, delivery, and performance of this Agreement have been duly authorized by all necessary corporate or organizational action and do not violate any other agreement by which it is bound.

7.2 **Customer Representations and Warranties.** Customer further represents and warrants that: (a) Customer and its Users have and will maintain all necessary rights, consents, and permissions to submit, store, and process Customer Content in the Software Service and to grant the rights and licenses set out in this Agreement; (b) Customer Content, and Customer's use of the Product in accordance with this Agreement, will not infringe, misappropriate, or otherwise violate any third-party's rights or Applicable Laws; and (c) Customer will not knowingly introduce viruses, malware, or other harmful code into the Product.

7.3 **Provider Limited Warranty.** Provider warrants that, during the applicable Subscription Period, the Software Service will operate in all material respects in accordance with the applicable Documentation, when used in accordance with this Agreement and the Documentation. Provider will not materially reduce the overall functionality of the Software Service during the applicable Subscription Period under an Order Form, except for changes necessary to improve security, performance, or legal compliance, or to reflect updates to Provider's generally available product offering, and Provider will use commercially reasonable efforts to avoid changes that materially diminish previously available Standard Module or Comprehensive Module Functionality.

7.4 **Warranty Remedy.** If Customer believes that the Software Service does not comply with the warranty in Section 7.3, Customer must provide Provider with written notice describing the nonconformity in reasonable detail within forty-five (45) days after Customer first becomes aware of the issue. Following receipt of such notice and sufficient information to permit Provider to reproduce or verify the issue, Provider will use commercially reasonable efforts to correct the nonconformity or provide a workaround that materially remedies the issue, within a reasonable time. If Provider is unable to remedy the nonconformity in a commercially reasonable period, not to exceed forty-five (45) days from receipt of sufficient details, Customer may terminate the affected Order Form upon written notice, and Customer will be issued a prorated refund of any prepaid, unused Software Service Fees for the remainder of the Subscription Period under that Order Form.

7.5 **Disclaimers.** Except as expressly provided in this Section 7, the Product, all professional services, and all other materials and services provided under this Agreement are provided as is and as available, and each party disclaims all other warranties, conditions, and representations of any kind, whether express, implied, statutory, or otherwise, including any implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement, and any warranties arising from course of dealing or usage of trade. Provider does not warrant that the Product will be error-free, uninterrupted, secure, or free of harmful code, or that it will meet Customer's requirements, or that all defects will be corrected. Provider is not responsible for any delays, delivery failures, or other damage resulting from the transfer of data over communications networks and facilities not controlled by Provider, including the internet and Customer's own networks, and Customer acknowledges that the Software Service may be subject to limitations, delays, and other problems inherent in the use of such communications facilities.

8 **Limitation of Liability.**

8.1 **Exclusion of Certain Damages.** To the maximum extent permitted by Applicable Laws, neither party will be liable to the other party for any indirect, incidental, consequential, special, exemplary, or punitive damages, or for any loss of profits, revenue, business opportunities, or anticipated savings, arising out of or in connection with this Agreement, even if such party has been advised of the possibility of such damages or such damages were otherwise foreseeable.

8.2 **Cap on Direct Damages.** Except as provided in Section 8.3, each party's total aggregate liability arising out of or relating to this Agreement, whether in contract, tort (including negligence), strict liability, or any other legal or equitable theory, will not exceed, in the aggregate, an amount equal to $1,000,000 (the "**Liability Cap"**).

8.3 **Exceptions to Cap.** The Liability Cap in Section 8.2 does not apply to: (a) Customer's obligation to pay any undisputed Fees or Taxes owed under this Agreement; (b) Either party's indemnification obligations under Section 9; (c) Either party's breach of its confidentiality obligations under Section 10; or (d) Any liability that cannot be limited under Applicable Laws.
For such matters, each party's aggregate liability will instead be limited to two (2) times the Liability Cap, except where Applicable Laws prohibit such limitation or where liability must be unlimited by law.

8.4 **Basis of the Bargain.** The limitations and disclaimers of liability in this Section 8 are a fundamental part of the basis of the bargain between the parties and will apply even if any remedy fails of its essential purpose.

9 **Indemnification.**

9.1 **Provider Indemnification.** Provider will defend Customer and its Affiliates, and their respective officers, directors, and employees (collectively, the "**Customer Indemnified Parties**") against any third-party claim, demand, suit, or proceeding (a "**Claim**") alleging that Customer's authorized use of the Software Service in accordance with this Agreement (i) infringes or misappropriates any valid, enforceable intellectual property right of such third party (an "**Infringement Claim**"), or (ii) would, if true, constitute a breach by Provider of its representations, warranties, or obligations under this Agreement, and will pay any damages, costs, and expenses (including reasonable attorney's fees) finally awarded against the Customer Indemnified Parties in connection with a Claim, or agreed in settlement by Provider, subject to the limitations set forth in this Agreement.

9.2 **Customer Indemnification.** Subject to the limitations set forth in this Agreement and to the extent permitted by applicable law, Customer will defend Provider and its Affiliates, and their respective officers, directors, and employees (collectively, the "**Provider Indemnified Parties**") against any third-party Claim arising from or relating to: (a) Customer's or any Users' use of the Product in violation of this Agreement or Applicable Laws; or (b) any allegation that the Customer Content, or the use of Customer Content by Provider as permitted by this Agreement, infringes or misappropriates any intellectual property right or other right of a third party, or violates any Applicable Laws, and will pay any damages, costs, and expenses (including reasonable attorney's fees) finally awarded against the Provider Indemnified Parties in connection with any such Claim, or agreed in settlement by Customer, subject to the limitations set forth in this Agreement. Customer will have no obligation to indemnify, defend, or hold harmless any Provider Indemnified Party to the extent a Claim arises from Provider's acts or omissions, including any breach of this Agreement, negligence, or willful misconduct.

9.3 **Indemnification Procedure.** The indemnified party (the "**Indemnified Party**") must: (a) promptly notify the indemnifying party (the "**Indemnifying Party**") in writing of any Claim for which the Indemnified Party seeks indemnification (provided that failure to give prompt notice will not relieve the Indemnifying Party of its obligations except to the extent it is materially prejudiced by such failure); (b) give the Indemnifying Party sole control over the defense and settlement of the Claim (except that the Indemnifying Party may not settle any Claim that requires the Indemnified Party to admit fault or pay any amount not fully indemnified, without the Indemnified Party's prior written consent); and (c) provide reasonable cooperation and assistance at the Indemnifying Party's expense. The Indemnified Party may participate in the defense of the Claim, at its own expense, with counsel of its choosing.

9.4 **Infringement Remedies.** If Customer's use of the Software Service is, or in Provider's reasonable opinion is likely to be, enjoined due to an Infringement Claim, Provider may, at its expense and in its discretion: (a) obtain for Customer the right to continue using the affected Software Service as provided in this Agreement; (b) modify the Software Service so that it becomes non-infringing without materially reducing its core functionality; or (c) replace the affected component of the Software Service with a non-infringing component of substantially equivalent functionality. If Provider reasonably determines that none of the above options is commercially feasible, Provider may terminate the affected Order Form upon written notice and will refund to Customer a prorated portion of any prepaid, unused Software Service Fees for the remainder of the Subscription Period under that Order Form. Provider's obligations under this Section are in addition to, and not in lieu of, its indemnification and defense obligations under Section 9.1.

9.5 **Exclusions.** Provider has no indemnification obligations under this Section 9 with respect to any Claim to the extent arising from: (a) Use of the Software Service in combination with products, services, data, or software not provided or authorized in writing by Provider, if the Claim would not have arisen but for such combination; (b) Modifications to the Software Service that were not made or authorized in writing by Provider; (c) Customer's or any Users' use of the Software Service in violation of this Agreement or the Documentation, if the Claim would not have arisen but for such violation; (d) Use of an outdated version of the Software Service if a newer version made available by Provider would have avoided the alleged infringement without materially reducing functionality; or (e) Any third-party open-source software components incorporated into the Software Service, to the extent the Claim arises solely from such components and not from any modification made by Provider to such components.

9.6 **Exclusive Remedy.** This Section 9 states each party's sole and exclusive liability, and the other party's sole and exclusive remedy, for any third-party Claim that the Product infringes, misappropriates, or otherwise violates any intellectual property right or other proprietary right of a third party.

10 **Confidentiality.**

10.1 **Obligations.** Each party, as Recipient of Confidential Information of the other party, will: (a) use the Discloser's Confidential Information solely for the purposes of exercising its rights and performing its obligations under this Agreement; (b) not disclose the Discloser's Confidential Information to any third party except as permitted in this Agreement; and (c) protect the Discloser's Confidential Information using at least the same degree of care that it uses to protect its own similar information, but in no event less than a reasonable standard of care.

10.2 **Exclusions.** Confidential Information does not include information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Discloser; (b) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (c) is received from a third party without breach of any obligation owed to the Discloser; or (d) was independently developed by the Recipient without use of or reference to the Discloser's Confidential Information.

10.3 **Permitted Disclosures.** Recipient may disclose the Discloser's Confidential Information: (a) to its and its Affiliates' employees, contractors, advisors, and representatives who have a need to know such information for purposes of this Agreement and who are bound by confidentiality obligations at least as protective as those set forth in this Section 10; or (b) to the extent required by Applicable Laws or by a valid order of a court or other governmental authority, provided that (i) unless prohibited by Applicable Laws, Recipient gives Discloser reasonable advance written notice of such required disclosure, and (ii) reasonably cooperates, at Discloser's expense, with Discloser's lawful efforts to obtain confidential treatment or otherwise limit the scope of such disclosure. Notwithstanding anything to the contrary in this Agreement, Provider acknowledges that Customer is a governmental entity and a "public agency" subject to the California Public Records Act (Cal. Gov't Code Gov't Code § 7920.000 et seq, formerly §§ 6250 et seq.) and the Ralph M. Brown Act (Cal. Gov't Code §§ 54950 et seq.), as well as other similar state, local, or municipal laws, regulations, or ordinances that may require public disclosure of records or information relating to Customer's business. Provider further acknowledges that Customer's disclosure of Confidential Information, including Provider Confidential Information, as required by the Public Records Act, the Brown Act, or any other applicable disclosure law or regulation shall not constitute a breach of this Agreement. Provider hereby consents in advance to any such disclosures and agrees that it shall not assert any claim against Customer arising from or relating to Customer's compliance with such disclosure obligations. Nothing in this Agreement shall be interpreted to require Customer to withhold disclosure of any record that Customer, in good faith, determines is subject to mandatory disclosure under Applicable Laws.

10.4 **Return and Retention.** Upon termination or expiration of this Agreement, and upon Discloser's written request, Recipient will return or destroy all copies of Discloser's Confidential Information in its possession or control, except that Recipient may retain (A) copies in its standard data backup or archival systems maintained in the ordinary course of business; and (B) copies as required by Applicable Laws, in which case such retained Confidential Information will remain subject to this Section 10 for so long as it is retained. Upon Discloser's written request, Recipient will certify in writing its compliance with this Section 10.4.

11 **Intellectual Property Ownership.**

11.1 **Ownership of Product.** As between the parties, Provider and its licensors retain all right, title, and interest in and to the Product, including all related intellectual property rights, and all improvements, enhancements, and modifications thereto, whether or not suggested or requested by Customer or arising from Customer's use of the Product. For clarity, nothing in this Section 11.1 grants Provider ownership of Customer Content or Customer Confidential Information

11.2 **Ownership of Customer Content.** As between the parties, Customer retains all right, title, and interest in and to Customer Content, subject to the license granted to Provider in Section 2.6 and any other rights expressly granted to Provider in this Agreement.

11.3 **No Implied Licenses.** Except for the limited rights expressly granted in this Agreement, no other rights or licenses, whether express or implied, are granted by either party. All rights not expressly granted are reserved.

12 **General Provisions**.

12.1 **Entire Agreement.** This Agreement, together with all Order Forms and any exhibits or schedules attached hereto or incorporated by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning that subject matter.

12.2 **Amendments and Waivers.** No amendment, modification, or waiver of any provision of this Agreement will be effective unless it is in writing and signed by an authorized representative of each party. A waiver's failure to enforce any provision will not constitute a waiver of future enforcement of that or any other provision.

12.3 **Governing Law; Venue.** This Agreement is governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of law rules. Any legal action or proceeding arising under or relating to this Agreement will be brought exclusively in the state courts of the County of Santa Clara, or if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

12.4 **Equitable Relief.** Each party acknowledges that a breach of Sections 10 or 11 may cause irreparable harm for which monetary damages would be an inadequate remedy. Accordingly, in the event of such a breach or threatened breach, the non-breaching party may seek injunctive or other equitable relief in any court of competent jurisdiction, without the necessity of posting bond or proving actual damages.

12.5 **Assignment.** Neither party may assign or transfer this Agreement, in whole or in part, without the other party's prior written consent. Any attempted assignment in violation of this Section 12.5 is void. This Agreement is binding upon and will inure to the benefit of the parties and their permitted successors and assigns.

12.6 **Independent Contractors.** The parties are independent contractors, and nothing in this Agreement is intended to create a partnership, joint venture, agency, or employment relationship between the parties. Neither party is authorized to make any commitments or representations on behalf of the other party. In furtherance of the foregoing, it is understood and agreed that Provider, in the performance of the work and services to be performed by Provider pursuant to this Agreement, shall act as and be an independent contractor and not an agent or employee of City of San Jose ("City") or Customer; and as an independent contractor, Provider shall obtain no rights to retirement benefits or other benefits which accrue to City's employees, and Provider hereby expressly waives any claim it may have to any such rights.

12.7 **Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement, and no person or entity other than the parties hereto and their permitted successors and assigns will have any rights under this Agreement.

12.8 **Force Majeure.** Neither party will be liable for any failure or delay in performance of its obligations under this Agreement (other than payment obligations) to the extent caused by a Force Majeure Event, provided that the affected party (A) promptly notifies the other party of the Force Majeure Event, (B) uses commercially reasonable efforts to mitigate the impact of the event, and (C) resumes performance as soon as reasonably practicable after the event ceases.

12.9 **Export Controls and Sanctions.** Customer will not, and will ensure its Users do not, export, re-export, or otherwise transfer the Product or any related technical information in violation of any applicable export control or economic sanctions laws. Customer represents and warrants that it is not located in, organized under the laws of, or owned or controlled by persons in, any jurisdiction subject to comprehensive U.S. sanctions, and is not a person identified on any applicable denied or restricted party list.

12.10 **Notices.** All notices under this Agreement must be in writing and will be deemed given: (A) when delivered personally; (B) when sent by confirmed email (excluding automated receipts), if followed within five (5) business days by a hard copy sent by a recognized overnight courier; or (C) one (1) business day after being sent by a recognized overnight courier, to the addresses set forth in the Order Form or to such other address as either party may designate by notice to the other in accordance with this Section 12.10.

12.11 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such provision will be enforced to the maximum extent permissible, and the remaining provisions of this Agreement will remain in full force and effect.

12.12 **Counterparts; Electronic Signatures.** This Agreement (including any Order Form) may be executed in counterparts, each of which will be deemed an original, and all of which together will constitute one and the same instrument. Signatures delivered by electronic transmission (including PDF or other electronic signature methods) will be deemed to have the same legal effect as original signatures.

12.13 **Insurance Requirements**. Provider shall obtain and maintain the insurance policies and coverage set forth in **Exhibit A** (entitled **"Insurance Requirements"**), which is attached hereto and incorporated herein by reference. All required insurance policies, endorsements, certificates of insurance, and/or binders shall be subject to approval by the City's Risk Manager prior to the execution of this Agreement. The insurance requirements set forth herein are subject to amendment or waiver only upon the prior written approval of the City's Risk Manager. Provider shall furnish Customer with copies of the required insurance policies, endorsements, certificates of insurance, and/or binders prior to commencement of any services under this Agreement.

12.14 **Non-Discrimination**. Provider shall not discriminate, in any manner, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin in connection with or related to the performance of this Agreement.

12.15 **Compliance With Laws**. During the Subscription Period, Provider shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

12.16 **Books and Records**.

(a) Financial Records. Provider shall maintain complete and accurate books, records, invoices, and other documents reasonably related to fees charged to Customer under this Agreement for a period of at least three (3) years, or for any longer period required by applicable law, following the date of final payment by Customer.

(b) Performance Records. Provider shall maintain records reasonably necessary to demonstrate its performance of its obligations under this Agreement, including the provision of Software Service and any professional services, for a period of at least three (3) years, or for any longer period required by applicable law, following expiration or termination of this Agreement.

(c) Inspection and Audit. Upon reasonable prior written notice, Customer (or its authorized representatives) may inspect or audit the records required to be maintained under this Section during Provider's normal business hours, at no cost to Customer, for the purpose of verifying Provider's compliance with this Agreement. Where practical, Provider shall make copies of such records available to Customer at Customer's offices; otherwise, unless the parties agree otherwise, such records shall be made available at Provider's principal place of business or electronically.

(d) Preservation of Records. If Customer has reasonable cause to believe that records subject to this Section are at risk of loss or destruction due to Provider's dissolution, termination of business, or similar event, Customer may, upon written request, require that custody of such records be transferred to Customer for preservation. Provider shall retain reasonable access rights to such records, as shall Provider's authorized representatives or successor-in-interest.

12.17 **Gifts**. Provider acknowledges that it is familiar with the City's prohibition on the acceptance of gifts by City officers and designated employees, as set forth in Chapter 12.08 of the San Jose Municipal Code. Provider agrees that it shall not offer or give, directly or indirectly, any gift to any City or Customer officer, board member, or employee that is prohibited by such Chapter. Any offer or giving of a gift prohibited by Chapter 12.08 of the San Jose Municipal Code shall constitute a material breach of this Agreement by Provider. In addition to any other remedies available at law or in equity, Customer may terminate this Agreement for such breach in accordance with the applicable termination provisions of this Agreement.

12.18 **Disqualification of Former Employees**. Provider acknowledges that it is familiar with the provisions relating to the disqualification of former City officers and employees in matters connected with their former duties or official responsibilities, as set forth in Chapter 12.10 of the San Jose Municipal Code (the "**Revolving Door Ordinance**"). Provider shall not utilize, directly or indirectly, any officer, employee, or agent of Provider to perform services under this Agreement if, in the performance of such services, such officer, employee, or agent would be in violation of the Revolving Door Ordinance.

EXHIBIT A
INSURANCE REQUIREMENTS

Vendor, at Vendor's sole cost and expense, shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of the services hereunder by Vendor, its agents, representatives, employees or subcontractors or suppliers.

I. Minimum Scope and Limit of Insurance

There shall be no endorsements reducing the scope of coverage required below unless approved by the City's Risk Manager.

Type of Insurance	Minimum Limit
1 Commercial General Liability The coverage provided by Insurance Services Office "occurrence" form CG 0001, including coverages for contractual liability, personal injury/advertising injury, products/completed operations, broad form property damage, independent contractors, products and completed operations.	$1,000,000 per occurrence for bodily injury, personal injury and property damage or $2,000,000 annual aggregate.
2 Automobile Liability The coverage provided by Insurance Services Office form number CA 0001. Coverage shall be included for all owned, non-owned and hired automobiles.	$1,000,000 combined single limit per accident for bodily injury and property damage.
3 Workers' Compensation and Employer Liability A: Workers Compensation as required by Statute and as required by the Labor Code of the State of California. B: Employers' Liability	Coverage A: Statutory Coverage B: $1,000,000 each accident/ each employee injury by disease
4 Cyber Liability Data recovery and privacy liability insurance covering liabilities for financial loss resulting or arising from acts, errors, or omissions, in rendering products provided under this agreement. This may be met through a standalone policy or included as a component in a Commercial General Liability Policy.	Not less than $1,000,000 each claim and annual aggregate.

Any limits requirement may be met with any combination of primary and excess coverage so long as the excess coverage is written on a "follow form" or umbrella basis.

II. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager.

III. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverages

a. The City, its officials, employees, and agents are to be covered as additional insureds as respects: liability arising out of activities performed by, or on behalf of, Vendor; products and completed operations of Vendor; premises owned, leased or used by Vendor; or automobiles owned, leased, hired or borrowed by Vendor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, and agents.

b. Vendor’s insurance coverage shall be primary insurance as respects the City, its officials, employees, and agents. Any insurance or self-insurance maintained by the City, its officials, employees, and agents shall be excess of Vendor’s insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officials, employees, or agents.

d. Coverage shall state that Vendor’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

e. Coverage shall contain a waiver of subrogation in favor of the City, its officials, employees, and agents.

2. Workers’ Compensation and Employers Liability

Coverage shall be endorsed to state carrier waives its rights of subrogation against the City, its officials, and agents.

3. Claims Made Coverages

If coverage is obtained on a “claims made” policy form, the retroactive date shall preceed the date services were initiated with the City and the coverage shall be maintained for a periof of three (3) years after termination of services under this Agreement.

4. All Coverages

Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days’ prior written notice has been given to the City; except that ten (10) days’ prior written notice shall apply in the event of cancellation for non-payment of premium.

IV. Acceptability of Insurance

Insurance is to be placed with insurers acceptable to the City’s Risk Manager.

V. Verification of Coverage

Vendor shall furnish the City with certificates of insurance and with endorsements affecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

Copies of all the required ENDORSEMENTS shall be attached to the CERTIFICATE OF INSURANCE which shall be provided by Vendor’s insurance company as evidence of the stipulated coverages.

Proof of insurance shall be emailed in pdf format to: Riskmgmt@sanjoseca.gov:

<u>Certificate Holder</u>
City of San José – Finance Department
Risk & Insurance
200 East Santa Clara St., 14th Floor
San José, CA 95113-1905

VI. Subcontractors

Vendor shall include all subcontractors as insureds under its policies or shall obtain separate certificates and endorsements for each subcontractor.