



HOSTING AND SERVICES AGREEMENT
(City of San Diego Contract Number 20000114-26-L)

This Hosting and Services Agreement (this "Agreement") is entered into by and between Early Morning Software, Inc., a Maryland corporation with offices located at 227-229 North Holliday Street, Baltimore, MD 21202 ("Service Provider") and City of San Diego, a municipal corporation, with offices located throughout the County of San Diego, ("Client").

1. The System.

1.1 Definitions. Terms not otherwise defined herein are defined in **Exhibit C**, attached and incorporated herein by reference.

1.2 Provision of System. Client engages Service Provider to provide the System for Client to access and use under the terms and conditions set forth herein and in the following **Exhibits**.

1.3 Data Center and Service Standards. The System shall be kept and maintained by Service Provider at the Data Center. Service Provider shall be solely responsible for the setup, configuration, operation and management of all computer systems, hardware, software and data at the Data Center used by Service Provider to provide the System; if indicated on an Exhibit, Service Provider may be purchasing Client specific hardware to implement the System. Service Provider shall maintain the Service Standards as described in **Exhibit B** (including but not limited to any safeguards required by applicable law). Service Provider shall not be responsible for non-compliance with Service Standards to the extent that such non-compliance results from the actions or inactions, or criminal or reasonably unforeseeable intentional acts, of any Client or third party. Scheduled Maintenance on the System shall not be considered Service Standards non-compliance.

1.4 Implementation and Logon Access.

(i) Implementation Schedule. Not applicable as Client is a current user.

(ii) Go Live Date. Not applicable as Client is a current user.

(iii) Terms of Use. All persons logging into the System shall agree to the Terms of Use as posted on the Website; provided however that such Terms of Use shall not modify this Agreement and as between Client and Service Provider, this Agreement shall supersede and control over the Terms of Use.

1.5 Security. Service Provider shall employ commercially reasonable technological or other security measures as required by applicable law to maintain the security and privacy of Proprietary Information and Personal Information. Additionally, the parties agree to cooperate to enter into a mutually acceptable amendment to this Agreement to the extent necessary to timely comply with applicable federal laws and regulations.

1.6 Support. Service Provider shall provide Client with telephone and electronic mail software support as set forth in **Exhibit A**. Service Provider shall follow all support priority and escalation procedures and electronic support systems established by Service Provider in the Documentation or on the Website. Client shall designate a reasonable number of Client's technical staff as Client's contact with Service Provider regarding technical support obligations including Implementation, data input, archival, critical form/report generation and database maintenance support.

1.7 Enhancements. Service Provider may, on a schedule determined by Service Provider, update or enhance the System. During the Term, such updates and enhancements shall be automatically made available to Client through Scheduled Maintenance at no additional cost.

1.8 Additional Services. Client may request and Service Provider may provide, subject to Service Provider's written consent, Additional Services, which shall be fully described in one or more additional **Exhibit(s) A-D**. All Additional Services are billed at Service Provider's standard, published rates as of the date such Additional Services are contracted, unless otherwise set forth in writing in the applicable Exhibit A-D.

2. Client Obligations and Acknowledgements. Unless otherwise provided in a separate written agreement between the parties, Client shall be solely responsible for: (i) providing data and information necessary for the provision of the System as necessary to make effective use of the System; (ii) providing accurate, timely and complete information to Service Provider regarding the data used in the System; (iii) maintaining the confidentiality of all user names and passwords and secure access to all user names and passwords only to Authorized Persons; and (iv) all actions taken by Service Provider at Client's direction or request provided, however, that Service Provider otherwise materially complies with the terms of this Agreement in taking such actions.

3. Subscription License; Proprietary Rights.

3.1 Software and Documentation. During the Term, Service Provider grants to Client a nontransferable (except as permitted under Section 14.4) and nonexclusive license and right to: (i) access the System using authorized user names and passwords solely for the purpose of using the System for Client's internal business operations in accordance with the number of access licenses and the Documentation as provided herein; and (ii) reproduce the Documentation solely for use as provided therein. No other rights are granted herein and all other rights are reserved, as specified in more detail in Section 11 below.

3.2 Ownership Acknowledgment. All rights and property interests, including but not limited to patents, copyrights, Trade Secrets, trademarks and other proprietary rights recognized under applicable law in or relating to the System and all modifications, adaptation, derivative works and enhancements thereto, are owned exclusively by Service Provider and/or its licensors, and all such rights not expressly granted herein are reserved to Service Provider. Notwithstanding the above, Service Provider shall not acquire through this Agreement any ownership interest in Personal Information or in any Client provided data or software or Client provided intellectual property rights, or any information derived from data provided by the client.

3.3 Trademarks. No party will use in any manner the Marks of the other party without the express written permission of such other party, which consent may be withheld in the sole and absolute discretion of such other party. Notwithstanding the above, either party may publicly display, copy or reproduce the Marks of the other party solely in accordance with the purpose and intent of this Agreement; provided however that neither party shall alter, modify or revise any Mark of the other party. Any such use contemplated by this section is restricted by San Diego Council Policy 000-41.

3.4 Account Information and Data. Service Provider does not own any Client Data. Vendor data entered directly to System is owned by Services Provider and made available to Client for usage in its operations and reporting in the System. Client, not Service Provider, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Client Data, and Service Provider shall not be responsible or liable for Client's direct or indirect acts or omissions resulting in the deletion, correction, destruction, damage, loss or failure to store any Client Data. In the event this Agreement is terminated (other than by reason of Client's breach), Service Provider will make available to Client a file of the Client Data within 30 days of termination. Upon notification of termination for any reason and during the term of contract, Service Provider will reasonably cooperate with client for a transfer of data either

directly to the client, or to a subsequent contractor. If such services are required after the term of the contract, Service Provider will provide requested data transfer services for a fee.

3.5 Acceptable Uses. Client may not use the system: (i) send unsolicited commercial email or otherwise duplicative or unsolicited messages in violation of applicable laws; or (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third-party privacy rights. Both parties will make commercially reasonable efforts and shall not intentionally: (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the System or the data contained therein; or (v) attempt to gain unauthorized access to the System or its related systems or networks.

4. Term; Termination.

4.1 Term. Regardless of the Go Live Date but subject to Section 4.2, this Agreement shall be effective from the Effective Date through the Initial Term and any mutually agreed upon Renewal Terms as set forth on **Exhibit A**.

4.2 Termination

(i) *For Cause*. Either party may terminate this Agreement at any time upon the giving of written notice in the event that the other party materially fails to perform its obligations under this Agreement, provided that such party receiving the notice of default fails to cure the default within (i) thirty (30) calendar days in the case of non-payment defaults other than defaults of Section 7 or (ii) ten (10) calendar days in the case of payment defaults or material defaults of Section 7, after the aggrieved party shall have given written notice specifying such failure or default.

(ii) *Automatic Termination*. This Agreement shall automatically terminate without notice or a right to cure upon any party's assignment for the benefit of creditors or any commencement by or against a party of any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws or laws of debtor's moratorium. Any assignment must have the written approval of Client, which shall not be unreasonably withheld.

4.3 Post-Termination Obligations. Upon any termination of this Agreement:

(i) *Proprietary Information*. Each party shall immediately return to the other, or at such other party's written election, destroy copies of, all of the other party's Proprietary Information. The party returning or destroying copies of such materials shall provide to the other party a signed written statement under oath certifying that it has returned or destroyed all of the other party's Proprietary Information and that such party does not retain in its

possession any copies of the other party's Proprietary Information in hardcopy or electronic format. Notwithstanding the above, each party shall be permitted to retain for its records one archival copy of all Proprietary Information for the exclusive purposes of defense of such party in the event of subsequent litigation or third-party claims arising out of or related to this Agreement, or compliance with applicable law, or to maintain an internal records retention policy. Such archival copy shall be destroyed on the earlier of the execution of a written release between the parties, or after six years from the effective date of termination. The confidentiality and security obligations of this Agreement shall survive termination and continue in perpetuity as to all such retained Proprietary Information.

(ii) *Personal Information.* Service Provider shall execute a data inspection of the electronic databases containing Personal Information provided by Client, so that upon completion of a data scrub of such Personal Information, all such Personal Information in all live electronic databases owned or operated by Service Provider will be rendered inaccessible by any user of the databases other than Service Provider and its employees or agents, provided that, such agents are bound by non-disclosure obligations that are at least as restrictive as those in this Agreement. Additionally, if feasible, Service Provider shall return or destroy all Personal Information that Service Provider still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible or applicable law requires such information to be retained in Service Provider's reasonable good faith determination, Service Provider shall limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

(iii) *License terminates.* Client shall immediately cease all use of the System, and all rights and licenses granted by Service Provider hereunder to Client shall immediately cease. Client shall promptly notify all Authorized Persons of the termination of this Agreement.

(iv) *No refunds.* Client shall not be entitled to any refund of any Fees or Expenses and shall remain liable for all amounts due up to and including the termination date, including if applicable, the Termination Fees set forth in Exhibit A; provided however that if Service Provider is finally determined to have been in material breach of this Agreement, Client shall be entitled to a refund of any prepaid amounts at the time of the termination.

(v) *Survival of Terms.* The provisions of Sections 1.3 and 1.5 (only as necessary to protect the confidentiality of retained Proprietary Information and Personal Information), 3.2, 3.3, 4.3, 5 (to the extent of any unpaid amounts), and Sections 6 through and including 14

shall continue and survive in full force and effect to the extent so provided therein.

5. Fees.

5.1 Reserved.

5.2 *Fees.* As consideration for providing access to the System, Client shall pay to Service Provider the Fees in the amounts and at the times specified on **Exhibit A**. Should the scope of services change for any reason beyond the scope originally agreed upon, Client and Service Provider shall execute amendments to increase the Fees, *provided* that Service Provider delivers to Client written notice of any such Fees increase not less than sixty (60) days prior to the effective date of such increase. All Fees and Expenses are non-refundable unless a provision herein or in an incorporated Exhibit expressly provides otherwise.

5.3 *Expenses.* In addition to Fees, Client shall reimburse Service Provider within the time specified on **Exhibit A** (if not time is specified, within the period in the next section) for all actual Expenses. Service Provider shall not exceed any budgeted or stated Expenses unless the Expense is an emergency and Service Provider is unable to obtain prior consent. Receipt for Expenses will be provided to Client, if requested. Service Provider shall not be liable for any failure to comply with the Service Standards or other breach of this Agreement proximately caused by Client's refusal to promptly, under the circumstances of the request, approve any Expense recommended by Service Provider.

5.4 *Payments.* All Fees and Expenses are due and payable by Client within thirty business (30) days of the monthly invoice therefore unless otherwise stated in writing. Client shall remit payment to Service Provider at the address identified in the invoice, and all payments shall be made in U.S. currency by means of a company check or if so, permitted by Service Provider, by ACH, wire or other electronic means.

5.5 *Taxes.* All Setup Fees, Fees and Expenses due under this Agreement are net amounts to be received by Service Provider, exclusive of all taxes, duties, sales taxes, assessments and similar taxes, and are not subject to offset or reduction because of any costs, expenses, taxes, duties or liabilities incurred by Client or imposed upon Service Provider in the performance of this Agreement or otherwise due as a result of this Agreement. Notwithstanding the above, Service Provider shall be responsible for the payment of Service Provider's income and withholding taxes.

6. Non-Disclosure and Confidentiality.

6.1 *Disclosure and Confidentiality.* Each party may disclose to the other Trade Secrets and Confidential Information of such party or of such party's associated companies, customers, and/or information regarding that a vendor/supplier is a vendor/supplier to the party, and/or transactions with such vendors/suppliers (but Supplier Information as defined in Exhibit C is not confidential). Recipient agrees to hold the Proprietary Information

disclosed by Discloser in confidence and not to, directly or indirectly, copy, reproduce, distribute, manufacture, duplicate, reveal, report, publish, disclose, cause to be disclosed or otherwise transfer such Proprietary Information to any third party or utilize such Proprietary Information for any purpose whatsoever other than as expressly contemplated by this Agreement. With regard to Trade Secrets, this obligation shall continue for so long as such information constitutes a Trade Secret under applicable law. With regard to Confidential Information, this obligation shall continue for the Term and for so long as Recipient maintains Confidential Information disclosed by Discloser. Except to the extent a party has a legal obligation to disclose information under a statute, rule or regulation (e.g. such as under the freedom of information act or similar applicable state laws – hereafter “Public Access Laws”), each party shall keep confidential the terms and conditions of this Agreement but may make general statements publicizing the fact that the parties have entered into this Agreement. Notwithstanding the above, upon prior written notice to Discloser, Recipient may disclose Discloser's Proprietary Information if, upon advice of counsel, such disclosure is required by a subpoena, court order or other compulsion of law (in which case Recipient will cooperate with Discloser to the extent reasonable to preserve the Proprietary Information from public disclosure beyond that necessary in such proceeding). A party subject to disclosure under a Public Access Law shall use its best efforts to inform the owner of the Proprietary Information that such information has been requested, and shall also use its best efforts to give the owner enough time to object or otherwise protect such information; provided that in all cases, it shall not be a breach hereof for a party to comply with a Public Access Law.

6.2 Exceptions. The above confidentiality obligations shall not apply to Proprietary Information if and to the extent that Recipient establishes that the information communicated: (i) was already known to Recipient, without obligation to keep such information confidential, at the time of Recipient's receipt from Discloser, as evidenced by documents in the possession of Recipient prepared or received prior to such communication; (ii) was received by Recipient in good faith from a third party lawfully in possession thereof and having no obligation to keep such information confidential; (iii) was publicly known at the time of Recipient's receipt from Discloser or has become publicly known other than by a breach of the Agreement; or (iv) prior to Recipient's disclosure of such information, such disclosure was consented to in writing by Discloser. Except as provided in any Public Access Law, unless otherwise designated and unless falling under this paragraph, all information transmitted between the parties (other than Personal Information) shall be presumed to be Confidential Information.

6.3 Security Measures. Without limiting the obligations specified above, Recipient agrees to implement the following security steps in order to protect the confidentiality and security of Proprietary Information of Discloser: (i) implement internal procedures to limit, control and supervise the use of Discloser's Proprietary Information; (ii) make Discloser's Proprietary Information available only to Recipient's employees, agents and contractors who comply with the non-disclosure obligations set forth herein; (iii) notify Discloser in writing of any suspected or known breach of the obligations and/or restrictions set forth herein; and (iv) use those security procedures it uses for its own Proprietary Information which it protects against unauthorized disclosure, appropriation or use, but not less than reasonable security procedures.

7. Personal Information.

7.1 Privacy Policy. Service Provider has developed a policy for the System setting forth Service Provider's procedures regarding its use and disclosure of Client data, Client Confidential Information and Personal Information. Service Provider shall provide Client with thirty (30) days prior written notice upon any material modification, amendment or supplement to the Privacy Policy. Notwithstanding anything herein to the contrary, Service Provider shall not be held liable for any improper use or disclosure of Personal Information by anyone not under Service Provider's specific direction or control.

7.2 Use and Disclosure. Except as otherwise restricted by this Agreement, Service Provider may use or disclose Client Confidential Information and Personal Information to provide services to Client and as otherwise as required by applicable law. For the avoidance of doubt, Service Provider's disclosure or use of De-Identified Information is not a breach of Sections 6 or 7 or any other provision herein.

8. Warranties and Covenants.

8.1 Both Parties. Each party warrants and/or covenants that: (i) it has the power and authority to execute and deliver this Agreement and has taken all necessary corporate action to authorize the execution and delivery of this Agreement; (ii) this Agreement is and shall be the legal, valid and binding obligation of such party, enforceable in accordance with its terms; and (iii) it is either sufficiently self-insured or shall procure and maintain in effect during the Term insurance in such amounts and of such types of coverage sufficient to cover potential claims resulting or arising from this Agreement, or as required by applicable law, whichever is greater.

8.2 Client. Client covenants that Client shall: (i) timely and fully perform its obligations under this Agreement; (ii) use the System in compliance with all applicable federal and state laws, rules and regulations; (iii) not post on or provide for the System any material that infringes the trademarks, copyrights or other intellectual property rights of third parties or that violates a right of privacy or constitutes defamation; (iv)

comply with all Documentation provided by Service Provider; (v) not alter, recast, revise, modify, translate, reformat, reverse engineer, compile, disassemble or decompile the System or any portion thereof; (vi) make no representations to Authorized Persons or third parties regarding the System or Service Provider's services that are not expressly authorized to be made in this Agreement; (vii) not use Service Provider's Marks in any manner except as permitted under this Agreement; and (viii) cooperate with Service Provider in its provision of the System including providing such technical assistance and information as reasonably requested by Service Provider.

8.3 Service Provider. Service Provider warrants and/or covenants that Service Provider: (i) owns or has acquired sufficient rights to all proprietary interests in the System necessary to grant the licenses set forth herein; (ii) shall maintain the System in compliance with all applicable federal and state laws, rules and regulations; (iii) shall promptly post on the System all information and materials provided by Client for posting, including all updates and amendments to such information and materials; (iv) the System will operate in accordance with the Service Standards; and (v) to the knowledge of Service Provider, the software necessary to provide the System contains no virus, Trojan horse, worm, or other software routines designed either to permit unauthorized access by third parties or to disable, erase, or otherwise harm any data supplied by Client. Service Provider also warrants and/or covenants all promises incorporated herein under Exhibit B.

8.4 Disclaimer. OTHER THAN AS EXPRESSLY SET FORTH ABOVE, NEITHER SERVICE PROVIDER NOR CLIENT MAKES ANY OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WHETHER ORAL OR WRITTEN, AND SERVICE PROVIDER EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY, ANY IMPLIED WARRANTY AGAINST INFRINGEMENT AND ANY IMPLIED WARRANTIES ARISING UNDER ANY APPLICABLE UNIFORM COMPUTER INFORMATION TRANSACTIONS ACT OR OTHER APPLICABLE LAW. THERE IS NO WARRANTY THAT THE SYSTEM OR ANY EFFORTS OR INFORMATION PROVIDED BY SERVICE PROVIDER WILL FULFILL ANY OF CLIENT'S PARTICULAR PURPOSES OR NEEDS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SERVICE PROVIDER SHALL NOT BE LIABLE FOR THE QUALITY OR ACCURACY OF INFORMATION PROVIDED BY CLIENT OR THIRD PARTIES FOR OR VIA THE SYSTEM NOR FOR ANY INACCURATE RESULTS DUE TO SERVICE PROVIDER'S PROCESSING OF ANY SUCH DATA. EXCEPT FOR THE EXPRESS WARRANTIES HEREIN THAT THE SYSTEM WILL PERFORM IN ACCORDANCE WITH THE SERVICE STANDARDS, SERVICE PROVIDER MAKES NO GUARANTEE OR WARRANTY OF TIMELINESS OF DELIVERY OF

THE SYSTEM TO, OR PROCESSING OF ANY INFORMATION OR DATA PROVIDED BY, CLIENT.

9. Indemnification.

9.1 Infringements. If a claim is made by a third party that use of the System or any portion thereof infringes a U.S. patent, copyright, trademark or Trade Secret ("Intellectual Property"), upon receipt of Client's written notice of such claim, Service Provider will have the option, in Service Provider's sole discretion, to: (i) replace the System with software or a system that is non-infringing, (ii) modify the System to make it non-infringing, or (iii) remove same and refund to Client all Fees paid to Service Provider on behalf of Client for same after deduction of an appropriate charge based on use by Client prior to such removal. Notwithstanding the above, Service Provider shall indemnify, defend and hold harmless Client against claims by any such third party that the System or a portion thereof infringes a U.S. Intellectual Property Right, unless the infringement results from Client's act or omission not authorized by or permitted by Service Provider. The obligations of this Section 9.1 shall be Service Provider's sole obligations in the event that such third party infringement claim is made against Client, and Client shall have no other recourse against Service Provider; *provided however* that this limitation of remedy shall not apply if Service Provider engaged in willful misconduct or acted with gross negligence.

9.2 By Service Provider. Service Provider agrees to indemnify, defend and hold harmless Client, its parent company, and subsidiaries of such parent company, their respective officers, directors, employees and agents, and elected officials from and against any and all damage, liability, cost and expense (including reasonable attorneys' fees) incurred as a result of claims by third parties and to the extent that such claims are caused by Service Provider's negligence.

9.3 Both Parties. Each party agrees to indemnify, defend and hold harmless the other party, its parent company and subsidiaries of such parent company, subsidiaries, associated companies, and their respective officers, directors and employees and agents from and against any and all damage, liability, cost and expense (including reasonable attorneys' fees) incurred as a result of a third party claim (including claims of Authorized Persons) arising from: (i) the gross negligence or willful misconduct of such party or such party's employees or contractors; or (ii) such party's material breach of any provision of this Agreement.

9.4 Exception and Notice. Notwithstanding Sections 9.1, 9.2 and 9.3, neither party shall be liable to the other party to the extent that such other party has incurred any liability to a third party as a result of its own material breach of this Agreement, negligence or intentional misconduct. The obligations of each party to provide indemnification under this Section 9 are contingent upon the indemnified party: (i)

promptly notifying the indemnifying party in writing of any claim; (ii) giving the indemnifying party sole control over the defense and settlement of the claim, provided that any settlement contains the full release of the indemnified party; and (iii) reasonably cooperating in defense and settlement efforts.

10. LIMITATION OF LIABILITY.

10.1 SUBJECT TO SECTION 10.3 BELOW: (i) CLIENT'S SOLE REMEDY IN THE EVENT OF A CLAIM AGAINST SERVICE PROVIDER FOR BREACH OF SECTIONS 1.2 THROUGH 1.8, AND 8.3(ii), 8.3(iii) AND 8.3(iv) SHALL BE FOR SERVICE PROVIDER TO REPAIR, REPLACE OR OTHERWISE CORRECT THE SYSTEM; AND (ii) IN NO EVENT WILL SERVICE PROVIDER, ITS SUBSIDIARIES AND/OR ASSOCIATED COMPANIES, BE LIABLE TO CLIENT UNDER THIS AGREEMENT OR OTHERWISE, REGARDLESS OF THE FORM OF CLAIM OR ACTION, IN AN AMOUNT THAT EXCEEDS THE AGGREGATE AMOUNT OF TWO TIMES THE FEES ACTUALLY PAID TO SERVICE PROVIDER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM; AND (iii) IN NO EVENT WILL SERVICE PROVIDER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUBSIDIARIES OR ASSOCIATED COMPANIES BE LIABLE FOR ANY DAMAGES OF ANY KIND TO ANYONE OTHER THAN CLIENT UNDER THIS AGREEMENT OR OTHERWISE, REGARDLESS OF THE FORM OF CLAIM OR ACTION.

10.2 SUBJECT TO SECTION 10.3 BELOW, IN NO EVENT WILL EITHER PARTY, ITS SUBSIDIARIES OR ASSOCIATED COMPANIES BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR COSTS (INCLUDING LEGAL FEES AND EXPENSES OTHER THAN THOSE AWARDED UNDER SECTION 13 OR 14.1), OR LOSS OF GOODWILL OR PROFIT IN CONNECTION WITH THE SUPPLY, USE OR PERFORMANCE OF OR INABILITY TO USE THE SYSTEM OR ANY PORTION THEREOF, LOSS OF DATA, FALSE OR ERRONEOUS INFORMATION TRANSMITTED VIA THE INTERNET OR IN CONNECTION WITH ANY CLAIM ARISING FROM THIS AGREEMENT, EVEN IF SUCH PARTY, ITS SUBSIDIARIES OR ASSOCIATED COMPANIES WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS.

10.3 Exceptions. The limitations of liability set forth in Sections 10.1 and 10.2 above shall not apply: (i) where the party seeking the benefit of the limitation has acted with gross negligence or engaged in willful misconduct; (ii) to third party claims for which the party seeking the benefit of the limitation owes a duty of indemnity under Section 9; (iii) to claims that are actually covered by insurance, in which case such claims shall be limited to the actual insurance coverage less any deductible; or (iv) to claims made for material breach by a party of Section 6 (Confidential Information) or Section 7 (Privacy). Notwithstanding any other provisions, no liability

of Service Provider shall arise for failure to provide the System if due to any cause beyond Service Provider's reasonable control.

10.4 No action arising out of this Agreement, regardless of form, may be brought by either party or any third party more than four (4) years after the date the cause of action accrued; provided however that this provision shall not affect or limit any longer time to bring an action provided in any statute, rule, regulation or order applicable to the claim being made.

11. Reservation of Rights. Service Provider reserves all rights not expressly granted herein. Except as set forth in this Agreement, no express or implied license or right of any kind is granted to Client regarding the System, including but not limited to any right to know, use, produce, receive, reproduce, copy, market, sell, distribute, transfer, translate, modify, adapt, disassemble, decompile or reverse engineer any software, create derivative works based on, or obtain possession of any source code of, or technological material relating to, the System or any portion thereof. Service Provider expressly reserves the right to terminate an Authorized Person's use of the System for default of the Terms of Use without terminating this Agreement and without liability to Client. Service Provider, Client, and their permitted successors or assigns, are the sole intended beneficiaries of this Agreement, there are no other intended beneficiaries of this Agreement, and no such unintended beneficiary or third party shall have the right to sue on or enforce this Agreement. The parties expressly agree that other Authorized Persons are not intended beneficiaries of this Agreement. Without limiting the foregoing, Client shall not (except as expressly permitted in this Agreement) (i) license, sublicense, sell, resell, transfer, assign, distribute, provide as a service bureau or software-as-a-service or otherwise commercially exploit or make available to any third party the System in any way; (ii) use Service Provider's Confidential Information, the System, or any knowledge gained of the functionality of the System, to make derivative works based upon the System or otherwise to attempt to duplicate in any material respect the functionality of the System; or (iii) create Internet "links" to the System or "frame" or "mirror" any content on any other server or wireless or internet-based device, except to provide direct access to known vendors for input. Client shall not allow sharing of access credentials or access rights but may reassign such rights from time to time to new Authorized Persons who are replacing former Authorized Persons who have terminated employment or otherwise changed job status or function and no longer use the System.

12. No competition; Non-Solicitation; No Raid. Each party represents and covenants that it shall not, directly or indirectly, during the Term and for a period of one (1) year thereafter hire, retain, induce, solicit, advise, interfere with,

seek to interfere with or otherwise contact any employee or independent contractor of the other party with respect to terminating their engagement with such other party or entering into an engagement with such party or such party's subsidiaries or Affiliates. The parties agree, however, that nothing in this Section shall: (i) prohibit a party from considering for employment or hiring an individual who applies for employment in response to a general media advertisement seeking employment applicants or otherwise not as the result of such party's initiation of contact with, or directed contact towards, such individual regarding employment; or (ii) release a party from liability for violation of a restrictive covenant found in a written employment agreement between the other party and such individual. In the event Service Provider hires, retains, or acquires the services of any City employee or personnel, the restrictions detailed in San Diego Municipal Code section 27.3550 shall apply to that relationship for the relevant period.

13. Dispute Resolution. Reserved.

14. Miscellaneous.

14.1 Applicable Law. This Agreement has been made, executed and delivered in California. The parties mutually stipulate and agree that this Agreement is in all respects (including, but not limited to, all matters of interpretation, validity, performance and breach) to be exclusively construed, governed and enforced in accordance with the laws of California without regard to conflict of provisions therein and all applicable federal laws of the United States of America, as from time to time amended and in effect. The parties agree that the Uniform Commercial Code - Article 2 Sales, the United Nations Convention on Contracts for the International Sale of Goods, and the Electronic Signatures in Global and National Commerce Act shall not apply in any respect to this Agreement or the parties.

14.2 Relationship of the Parties. The parties hereto are each, respectively, independent contractors. Except as expressly provided herein, nothing in this Agreement shall be: (i) deemed to constitute a partnership or joint venture between the parties or be deemed to constitute one party as agent of the other, for any purpose whatever, and neither party shall have the authority or power to bind the other, or to contract in the name of or create a liability against the other, in any way or for any purpose; or (ii) construed as a limitation on the powers or rights of either party to carry on its separate businesses for its sole benefit, including and not limited to the ability to enter into similar agreements with third parties, and each party shall take no action, directly or indirectly, which may prevent or hinder the other party from fulfilling its obligations to third parties.

14.3 Relief. Each party acknowledges that any violation of the confidentiality or intellectual property provisions of this Agreement will cause irreparable injury to the other party. Therefore, in addition to any other available remedies

and damages, such other party shall be entitled to an injunction to restrain the violation thereof by the breaching party, its subsidiaries, agents, servants, employees and all personnel acting for or with it (without the requirement to post a bond or security). Nothing herein shall be construed as prohibiting a non-breaching party from pursuing any other available remedy for breach or threatened breach of this Agreement, including actual damages.

14.4 Assignment. Either party may assign this Agreement at any time with the written consent of the other party to a corporate successor in interest, acquiror or other entity that purchases or obtains substantially all of the assets or stock of such party, provided that such transferee agrees in writing to be bound by the terms and conditions of this Agreement in the place of such party. Written consent shall not be unreasonably withheld.

14.5 Notice. All written communications between the parties shall be sent by First Class Mail or recognized courier, properly prepaid and sent to the addresses specified in this Agreement, or by electronic mail or facsimile. All such communications shall be deemed received upon the earlier of: (i) actual receipt or actual delivery to the address specified in accordance with this Agreement; (ii) three days after notice is deposited in a proper mail receptacle; (iii) upon receipt by the transmitting party of confirmation or answer-back (if delivery is by facsimile), or upon transmission by the transmitting party if delivery is by electronic mail. By written communication, either party may designate different contact information for purposes hereof.

14.6 Entire Agreement; Amendments. This Agreement may be signed in counterparts, each of which shall be deemed an original and which shall together constitute the entire Agreement. This Agreement, all documents referenced herein, and the Exhibits attached hereto represent the entire understanding between the parties with respect to the subject matter hereof and supersede all other prior written or oral agreements between the parties with respect to the subject matter hereof. Any waiver or modification of this Agreement will not be effective unless made in writing and signed by the authorized representatives of the parties. In the event of any direct conflict between the terms and conditions of this Agreement and any document referenced herein or any Exhibit, the terms of this Agreement shall control.

14.7 Force Majeure. If either party's performance of this Agreement, other than the payment of monies, is prevented, restricted or interfered with by reason of Force Majeure, such party shall, upon giving prior written notice to the other party, be excused from performance to the extent of the Force Majeure, provided that the party so affected shall use its best efforts to avoid or remove the causes of Force Majeure, and shall continue performance hereunder with the utmost dispatch whenever the Force Majeure is removed. Notwithstanding the foregoing, if the Force Majeure

continues for a period of one hundred eighty (180) calendar days or more, the unaffected party may, on written notice to the party affected, terminate this Agreement, and neither party shall have any further obligation to the other save for payment of all monies due and payable and for those provisions hereunder which survive termination of this Agreement.

14.8 Severability. If any provision hereof is declared invalid or unenforceable by a court of competent jurisdiction, then the meaning of that provision will be interpreted, to the extent feasible, in a way that renders it enforceable or valid. If no feasible interpretation is possible, the provision will be severed from this Agreement and the remainder of this Agreement will remain in full force and effect.



IN WITNESS WHEREOF, the parties, intending to create a document under seal, have caused this Agreement to be executed by their duly authorized representatives effective on the Effective Date.

CITY OF SAN DIEGO, A MUNICIPAL CORPORATION

Signature (Authorized Officer)

Claudia Abarca

Name (Print)

Director, Purchasing & Contracting

Title

11/05/2025

Date

Approved as to form this 5th day of November, 2025.

HEATHER FERBERT, City Attorney

By: Mark Imada (Nov 5, 2025 12:11:27 PST)

Deputy City Attorney

EARLY MORNING SOFTWARE, INC.

Donna S. Stevenson (Nov 5, 2025 11:53:33 EST)

Signature (Authorized Officer)

Donna S. Stevenson

Name (Print)

President/CEO

Title

11/05/2025

Date



INITIAL TERM, FEES AND EXPENSES

The Initial Term of this Agreement shall be twelve (12) months and Client shall have the unilateral right to exercise one additional twelve (12) month option term.

APPLICATION HOSTING SOFTWARE DELIVERABLES	HOSTING AND SUPPORT FEES
<p>1. Application Software</p> <p>2. Application Software Updates</p> <p>3. Application Software Support</p> <p>4. Application Software Training</p> <p>5. Application Software Documentation</p> <p>6. Application Software Integration</p> <p>7. Application Software Migration</p> <p>8. Application Software Deployment</p> <p>9. Application Software Maintenance</p> <p>10. Application Software Security</p> <p>11. Application Software Performance</p> <p>12. Application Software Availability</p> <p>13. Application Software Scalability</p> <p>14. Application Software Flexibility</p> <p>15. Application Software Interoperability</p> <p>16. Application Software Compatibility</p> <p>17. Application Software Reliability</p> <p>18. Application Software Usability</p> <p>19. Application Software Accessibility</p> <p>20. Application Software Portability</p> <p>21. Application Software Portability</p> <p>22. Application Software Portability</p> <p>23. Application Software Portability</p> <p>24. Application Software Portability</p> <p>25. Application Software Portability</p> <p>26. Application Software Portability</p> <p>27. Application Software Portability</p> <p>28. Application Software Portability</p> <p>29. Application Software Portability</p> <p>30. Application Software Portability</p>	<p>1. Hosting Fees</p> <p>2. Support Fees</p> <p>3. Training Fees</p> <p>4. Documentation Fees</p> <p>5. Integration Fees</p> <p>6. Migration Fees</p> <p>7. Deployment Fees</p> <p>8. Maintenance Fees</p> <p>9. Security Fees</p> <p>10. Performance Fees</p> <p>11. Availability Fees</p> <p>12. Scalability Fees</p> <p>13. Flexibility Fees</p> <p>14. Interoperability Fees</p> <p>15. Compatibility Fees</p> <p>16. Reliability Fees</p> <p>17. Usability Fees</p> <p>18. Accessibility Fees</p> <p>19. Portability Fees</p> <p>20. Portability Fees</p> <p>21. Portability Fees</p> <p>22. Portability Fees</p> <p>23. Portability Fees</p> <p>24. Portability Fees</p> <p>25. Portability Fees</p> <p>26. Portability Fees</p> <p>27. Portability Fees</p> <p>28. Portability Fees</p> <p>29. Portability Fees</p> <p>30. Portability Fees</p>

SALESPERSON	PROJECT NO.	PAYMENT TERMS	CONTRACT VEHICLE	REQUEST DATE	DUE DATE
Donna Stevenson		Net 30 Days			
PRODUCT NAME	DESCRIPTION	QUANTITY	ADD'L VOLUME	EMS PRICE	EXTENSION
ANNUAL SUBSCRIPTION					\$ 186,890.00
Vendor Search and Directory	Up to 5,000 Vendors (25,000)	1	0	\$ 6,995.00	\$ 6,995.00
Prime, Tier 2 and Sub Reporting	Up to 300 Reporters	1		\$ 6,995.00	\$ 6,995.00
Certification Management	Up to 300 Certifications (600)	2		\$ 6,995.00	\$ 13,990.00
On-line Application - Standard	Up to 300 Applications	1		\$ 11,995.00	\$ 11,995.00
Contract and PO Manager	Up to 300 Contracts (1800)	2	4	\$ 6,995.00	\$ 41,970.00
Subcontractor Management	Up to 300 Contracts with Sub Goals (900)	1	2	\$ 6,995.00	\$ 20,985.00
Prevailing Wage Payroll Tier 6	Up to \$500 Million	1		\$ 34,995.00	\$ 34,995.00
Living Wage Management	Up to 300 Contracts (1,000)	1	2	\$ 6,995.00	\$ 20,985.00
Workforce Management	Up to 300 Contracts	1		\$ 6,995.00	\$ 6,995.00
Project Labor Agreement Group					\$ -
Workforce Management	Up to 300 Contracts	1		\$ 6,995.00	\$ 6,995.00
Contract and PO Manager	Up to 300 Contracts	1		\$ 6,995.00	\$ 6,995.00
DataXchange API Service - Advanced	PlanetBids Integratio with PRiSM	1		\$ 6,995.00	\$ 6,995.00
Client Services					
CARES Program - Gold					
		Center Of Excellence Designation			\$ (28,034.00)
	ANNUAL SUBSCRIPTION FEE	1 YEAR	7/1/2025	6/30/2026	\$ 158,856.00
	ANNUAL SUBSCRIPTION FEE	2 YEAR	7/1/2025	6/30/2027	\$ 150,913.00
	ANNUAL SUBSCRIPTION FEE	5 YEAR	7/1/2025	6/30/2030	\$ 135,028.00
Quote Prepared By	Donna Stevenson				

ADDITIONAL PROVISIONS

Hosting pricing is based on an Initial Term of twelve (12) months, for Service Provider's standard server configuration, security and 24-hour backup/disaster recovery.

In the event that the Initial Term is not completed (other than for Client awarding a new contract for these services, or material breach of the Agreement by Service Provider), the Client shall owe full balance of any unpaid amounts. Hereafter the amount determined by this formula is the "Termination Fee."

EXHIBIT B

To the Hosting and Services Agreement (the "Agreement")

SERVICE STANDARDS

Service Provider is committed to providing the highest quality services to Clients (and Authorized Persons). The following guarantees are part of such commitment and demonstrate Service Provider's willingness to stand behind our internal processes, our network and the quality of our service, as described below.

I Availability Guarantees. Subject to Force Majeure as defined in the Agreement and Scheduled Maintenance:

- A. Hardware Availability. Service Provider guarantees that all Service Provider-owned or provided hardware operated and maintained ("Hardware") will be operational at least 99.0% of the time in each calendar month for standard services. Upon receiving a Request, Service Provider will calculate the duration of any Hardware Unavailability to Client.
- B. Core Applications Availability. Service Provider guarantees that the set of hosting applications and services that Client has access to from Service Provider and are being operated and maintained by Service Provider on behalf of Client ("Core Applications") will be operational at least 99.0% of the time in each calendar month for the Term. Core Applications Unavailability will be deemed to exist if one or more of the Core Applications purchased by Client is Unavailable at Service Provider's Internet boundary and does not respond to Service Provider's Core Applications monitoring systems. Upon receiving a Request, Service Provider will calculate the duration of any Core Applications Unavailability to Client.
- C. Power Availability. Service Provider guarantees to supply redundant AC power ("Power") to its Hardware at least 99.0% of the time in each calendar month. Upon receiving a Request, Service Provider will calculate the duration of any Power Unavailability to Client.
- D. Service Provider Data Center Network Availability. Service Provider guarantees to supply Client with Service Provider Data Center Connectivity at least 99.0% of the time in each calendar month. Upon receiving a Request, Service Provider will calculate the duration of the Data Center Connectivity Unavailability to Client.
- E. Backbone Network Availability. Service Provider guarantees at least 99.0% redundant Backbone Network uptime in each calendar month. Unavailability as a result of outages or other problems experienced by the backbone connectivity provider/manager will not apply against Service Provider's Guarantee of Backbone Network Availability. Upon receiving a Request, Service Provider will calculate the duration of the Backbone Network Unavailability to Client.

II Outage Notification Guarantee. Service Provider guarantees that it shall contact Client's designated technical contact by email (unless the email is known to be down, and then by phone) to the email address or telephone number, provided in writing to Service Provider, within one (1) hour after the occurrence of any Unavailability affecting any Availability Guarantee resulting in Client's complete inability to access the System despite attempts to properly log onto the system that comes to the knowledge of Service Provider. Not less than forty-eight (48) hours prior to a scheduled service interruption, Service Provider will use its best efforts to notify Client's technical contact by email of such scheduled interruption in service and the nature of such interruption. Such notice shall be effective for all purposes herein, despite any failure of Client to receive such notice for any reason, including problems with or failures of Client's e-mail system(s) or erroneous contact information provided by Client or any other reason.

III Internet Latency and Packet Loss Upstream Contribution. Service Provider has agreements with upstream internet service providers, which may include service level guarantees from such providers concerning average monthly packet transmission rates and packet loss between the Backbone Network and the network owned or operated by the upstream provider from which the packets are received and sent (there are no guarantees on latency or packet loss past upstream providers with which Service Provider has agreements). In the event of a substantial degradation in service due to substantial in-network latency or packet loss for which Service Provider can make a claim against its upstream providers and receive credits, Service Provider agrees to pass through the net credit, pro rata to all Fee-paying contract customers of Service Provider affected by such degraded service. In this paragraph "net credit" refers to the total credit actually

received from the upstream provider(s) resulting from the claim, less any direct costs incurred by Service Provider resulting from diagnosis and resolution of such issue (predominantly employee overtime but may include other direct costs associated with the specific event).

- IV **Call Center.** Through continual monitoring and evaluation, Service Provider will ensure that it employs the resources to meet the following Guarantees as to its provision of Call Center Services: a monthly average of 45 seconds of "hold time" per caller and a "dropped call" rate not to exceed a monthly average of 5%.
- V **Requests for Information.** Requests for information received by Service Provider's customer service department through product support site shall be responded to based upon the service level denoted in the table below. The response provided will set forth the amount of time estimated to resolve and/or further address the inquiry. Service Provider shall make concerted efforts to remediate and resolve critical issues, where Client's service is inoperable, within 48 – 72 hours. Client Services shall provide technical support services Monday through Friday from 8:00 a.m. to 8:00 p.m. EST, except on holidays and emergency closings.

Issue Type	Routine	Emergencies
Response Times (during business hours)	4 Business Hours	1 Business Hour
Response Times (after business hours)	Next day by noon	Next day by 9 AM EST
Contact Person	Solution Advisor	Client Services Manager

- VI **Modifications.** Service Provider in its sole discretion may modify, amend or revise one or more of these Guarantees at any time and from time to time, for reasons including and not limited to, to address changes in industry standard and/or commercially reasonable technology, changes in law, regulation or other governmental compliance requirements, and/or other changes in circumstances after execution of this Agreement. If such changes result in a material degradation of service, Client may negotiate reasonable reduction in service fees. Such changes or revisions shall be deemed effective upon the posting of updated Service Level Agreement information to the Website or to Service Provider's website at www.prismcompliance.com, and Service Provider shall give Client thirty (30) calendar days' notice by electronic mail of any proposed changes or revisions in these Guarantees or to this Service Level Agreement. If Service Provider refuses to negotiate in objective good faith any fee changes resulting from changes to the Services Standards, Client may terminate this Agreement without any obligation to pay fees for the remainder of the Term after the effective date of such termination.
- VII **Material Failure to Provide Services.** Service Provider's failure to provide the Services shall be deemed a material failure for purposes of Section 4.2.2 of the Subscription Agreement if any of the following have occurred:
- A. Unavailability: Unavailability equal to or greater than eight (8) consecutive hours in each of two (2) consecutive calendar months.
- B. Outage Notice: Failure to timely provide the guaranteed outage notice for three (3) or more outages in any given thirty (30) day period.
- VIII **System Security.** Service Provider shall employ reasonable, industry standard techniques to ensure the security and privacy of information provided by Client Parties, including: (i) encryption for all transmissions between the browser of Client Parties and Service Provider's web server is dependent upon the user's browser - SSL 128-bit encryption will be used for browsers with such capabilities, SSL 40-bit encryption will be used for browsers with 40-bit capacity; (ii) automatic user session termination at the expiration of a time period establish by Service Provider; (iii) the assignment and selection of unique user names and passwords for restricted access to the Services; (iv) protocol isolation of the database from the web servers; (v) redundant firewalls to ensure system network isolation from unauthorized requests; and (vi) industry standard disaster recovery procedures and file security procedures.
- A. The Data Center containing Service Provider's servers is located in a secure building with two independent security perimeters, which each use a different locking mechanism, independently keyed. The Data Center shall be equipped with facilities to allow alternate sources of power and cooling in the event of a failure of the main systems. System backups are run at least once daily, are password protected and maintained in a separately locked cabinet.
- B. Each user is assigned a username by Service Provider but is permitted to select its own unique password. Access to information contained on the database (including Personal Information) is restricted depending upon the identity of the user. The Services also permit each user to prepare printable reports of the information to which such user has access.

C. Guaranty: If any person obtains unauthorized access to Client's Proprietary Information or Personal Information referring or relating to any Employee of Client or any dependent of such Employee on the System through a brute force attack, or by compromising a Core Applications security system (i.e., if such break in is accomplished other than by a person guessing username/password combinations, obtaining access to username/password combinations from a Client Party or any third party, whether or not authorized to do so, or where the attack occurs as a result of the negligence or intentional action or inaction of a Client Party or a third party), Service Provider will: (i) report all such conduct to the appropriate authorities, and pursue the arrest and prosecution of such persons to extent reasonable under the circumstances; (ii) provide a detailed report to the Client of the method of attack, what systems were compromised, the information that was accessed, and all other pertinent information; and (iii) take reasonable effort under the circumstances to retrieve all information that was compromised and maintain the security of the data.

EXHIBIT C

To the Service Provider/Client Hosting and Services Agreement

DEFINITIONS

"Additional Services" shall mean services offered by Service Provider and related to the System as more fully described on **Exhibit A**.

"Affiliate(s)" means an entity directly or indirectly controlling, controlled by or under common control with a party, where control means the ownership or control, directly or indirectly, of more than 50 percent of all of the voting shares; provided that an entity shall be considered an affiliate only for the time during which such control exists.

"Authorized Persons" shall mean an employee of the Client (and, if specifically authorized in Exhibit A, a subcontractor of Client) who accesses or use the System for Client's business purposes within the restrictions and limitations of the rights granted in the Agreement.

"Confidential Information" means in respect of Service Provider, the System, all software provided in connection with the System (including both source and object code) and discussions between the parties concerning such software, all user names and passwords for accessing the System, the Documentation, all amendments, enhancements and derivative works to such software and/or materials; and in respect of both parties, it also means the terms and conditions of this Agreement, and information, other than Trade Secrets, that is of value to the Discloser and is treated as confidential. Confidential Information specifically shall not include Personal Information, or any information established to be excluded from this definition under Section 6.2.

"Content Creation Seat License" means the right, on a concurrent basis, for one Authorized Person to access and use the portion of the System to generate electronic collateral materials (e.g. video presentations, tests, announcements, blog entries, email advertisements and all other type of electronic collateral materials that the System allows to be created).

"Client Data" means (a) data that Client or Authorized Persons have input into the System, excluding Supplier Information; (b) transactional data that identifies, documents or describes a transaction between Client (or customers of Client) and a supplier; and (c) information about Client (or customers of Client) that identifies the Client or its customers. For the avoidance of doubt, "Client Data" does include any De-Identified Information.

"Data Center" shall mean a secure testing and operating environment with connectivity and management sufficient to allow Service Provider to comply with the Service Standards, as more fully described in **Exhibit B**.

"De-Identified Information" means meta-data about a transaction that does not identify the parties to the transaction or the details of the transaction, and/or aggregated de-identified information – i.e. information that cannot be used to identify Client, a customer of Client, or transaction details regarding Client or a customer of Client

"Discloser" refers to the party disclosing Proprietary Information under this Agreement, whether such party is Service Provider or Client and whether such disclosure is directly or through Discloser's employees or agents.

"Documentation" shall mean all information provided by Service Provider describing the features, basic use and operation of the System.

"Effective Date" shall mean the date this Agreement is fully executed by both parties.

"Expenses" shall mean all reasonable out-of-pocket expenses incurred by Service Provider that are directly related to Service Provider's performance of this Agreement.

"Fees" shall mean the fees charged by Service Provider and incurred by Client for provision of the System and Additional Services as more fully described in **Exhibit A**.

"Force Majeure" shall mean nonperformance of this Agreement by a party resulting from war, revolution, civil commotion, riot, fire, flood, disaster, acts of public enemies, blockade or embargo, strikes, any law, order, proclamation, regulation, ordinance, demand or requirement having a legal effect of any government or any judicial authority or representative of any such government, or any other act whatsoever, whether similar or dissimilar to those referred to above, which is beyond the reasonable control of the party affected.

"Go Live Date" shall mean the date on which the System is first made available for log in by Client's Employees or such earlier date as set forth in **Exhibit A**, provided however that the Go Live Date shall in no event be later than earlier of (a) the date a Client Party first logs on to the Website for purposes of actual business use; (b) Project Initiation & Completion of Milestones has been completed by Service Provider; or (c) ninety (90) calendar days after the Effective Date, regardless of whether Service Provider has completed implementation and installation services, unless the failure of Service Provider to complete implementation and installation services is primarily the result of Service Provider's breach of its obligations (in which case the 90 day period in item (c) of this definition shall be extended for the number of days that Service Provider is in breach of its obligations hereunder).

"Implementation" shall mean Service Provider's services in establishing online access for the Client to the Website and System and cooperating with Client to establish such interfaces with Client's current computer software and systems consistent with the transfer of data files in a format selected by Client that is reviewed and approved by Service Provider so as to allow Client to make effective use of the System as contemplated by this Agreement.

"Implementation Schedule" shall mean the mutually agreeable timeline developed by the parties for Service Provider's Implementation of the Website, as amended or modified by the parties under Section 1.4 of the Agreement.

"Initial Term" shall mean that length of time more fully described in **Exhibit A**.

"Marks" shall collectively mean the trademarks, tradenames, trade dress, servicemarks or other identifying symbols of a party, whether or not registered.

"Personal Information" shall mean all personally identifiable information referring or relating to a natural person or an entity.

"Proprietary Information" shall mean all of a given party's Trade Secrets and Confidential Information.

"Recipient" refers to the party receiving any Proprietary Information under this Agreement, whether such party is Service Provider or Client and whether such disclosure is received directly or through Recipient's employees or agents.

"Renewal Term" shall mean the succeeding consecutive one (1) year period following the Initial Term or a Renewal Term.

"Scheduled Maintenance" shall mean routine, scheduled maintenance on the System during non-peak usage periods.

"Service Standards" shall mean those service level standards as more fully set forth on **Exhibit B**.



"**Setup Fee**" shall mean the fee charged to Client for Implementation as more fully described in **Exhibit A**.

"**Supplier Information**" means demographic and identifying information about suppliers that are available in the System.

"**System**" means the Data Center and the hardware and software components used to provide Client access to the Service Provider's software functions as described in Exhibit(s) A-(x).

"**Term**" shall mean the length of time from the Effective Date through the effective date of a termination of this Agreement in accordance with its terms.

"**Terms of Use**" shall mean the terms and conditions of use of the System as set forth in the online user agreements and privacy policy developed by Service Provider.

"**Trade Secrets**" shall have that meaning as defined under Maryland law in respect of Service Provider or under the law of the jurisdiction where Client

resides in respect of Client. Trade Secrets shall expressly not include Personal Information.

"**Unavailability**" for purposes of the "Availability Guarantees" shall not include unavailability due to Scheduled Maintenance or other planned outages; packet loss; substantial in-network packet latency, equipment or software upgrades; unavailability arising from a Client Party service request; any action performed by Service Provider in order to maintain or improve Service Provider's services; any Client Party equipment, circuit, application, software, code, hardware device failure or malfunction; acts or omissions of Client Parties or other users of the System; planned or unplanned Service Provider upstream provider outages; or other reasons outside of Service Provider's reasonable control, such as Force Majeure.

"**Website**" shall mean the worldwide web page(s) Service Provider permits Client Parties to access and use in connection with the System.



EXHIBIT D
To the Hosting and Services Agreement
ASP Hosting Configuration

PRISM Configuration will be Application Service Provide and hosted as:

- ✓ PRISM Hosted Facility

EXHIBIT E



THE CITY OF SAN DIEGO
GENERAL CONTRACT TERMS AND PROVISIONS
APPLICABLE TO GOODS, SERVICES, AND CONSULTANT CONTRACTS

ARTICLE I SCOPE AND TERM OF CONTRACT

1.1 Scope of Contract. The scope of contract between the City and a provider of goods and/or services (Contractor) is described in the Contract Documents. The Contract Documents are comprised of the Request for Proposal, Invitation to Bid, or other solicitation document (Solicitation); the successful bid or proposal; the letter awarding the contract to Contractor; the City's written acceptance of exceptions or clarifications to the Solicitation, if any; and these General Contract Terms and Provisions.

1.2 Effective Date. A contract between the City and Contractor (Contract) is effective July 1, 2025, after the contract is signed by the parties and approved by the City Attorney in accordance with Charter section 40. Unless otherwise terminated, this Contract is effective until it is completed or as otherwise agreed upon in writing by the parties, whichever is the earliest. A Contract term cannot exceed five (5) years unless approved by the City Council by ordinance.

1.3 Contract Extension. The City may, in its sole discretion, unilaterally exercise an option to extend the Contract as described in the Contract Documents. In addition, the City may, in its sole discretion, unilaterally extend the Contract on a month-to-month basis following contract expiration if authorized under Charter section 99 and the Contract Documents. Contractor shall not increase its pricing in excess of the percentage increase described in the Contract.

ARTICLE II CONTRACT ADMINISTRATOR

2.1 Contract Administrator. The Purchasing Agent or designee is the Contract Administrator for purposes of this Contract, and has the responsibilities described in this Contract, in the San Diego Charter, and in Chapter 2, Article 2, Divisions 5, 30, and 32.

2.1.1 Contractor Performance Evaluations. The Contract Administrator will evaluate Contractor's performance as often as the Contract Administrator deems necessary throughout the term of the contract. This evaluation will be based on criteria including the quality of goods or services, the timeliness of performance, and adherence to applicable laws, including prevailing wage and living wage. City will provide Contractors who receive an unsatisfactory rating with a copy of the evaluation and an opportunity to respond. City may consider final evaluations, including Contractor's response, in evaluating future proposals and bids for contract award.

2.2 Notices. Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally delivered or deposited in the United States mail, with first class postage paid, attention to the Purchasing Agent. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract.

Notices to the City shall be sent to:

Purchasing Agent
City of San Diego, Purchasing and Contracting Division
1200 3rd Avenue, Suite 200
San Diego, CA 92101-4195

Notices to the Contractor shall be sent to:

Early Morning Software, Inc.
Attn: Donna Stevenson
227 North Holliday Street
Baltimore, MD 21202

ARTICLE III COMPENSATION

3.1 Manner of Payment. Contractor will be paid annually and not later than 30 days after the anniversary of the subscription term for the PRiSM Software Subscription provided in accordance with the terms and provisions specified in the Contract.

3.2 Invoices.

3.2.1 Invoice Detail. Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due.

3.2.2 Service Contracts. Contractor must submit invoices for services to City by the 10th of the month following the month in which Contractor provided services. Invoices must include the address of the location where services were performed and the dates in which services were provided.

3.2.3 Goods Contracts. Contractor must submit invoices for goods to City within seven days of the shipment. Invoices must describe the goods provided.

3.2.4 Parts Contracts. Contractor must submit invoices for parts to City within seven calendar (7) days of the date the parts are shipped. Invoices must include the manufacturer of the part, manufacturer's published list price, percentage discount applied in accordance with Pricing Page(s), the net price to City, and an item description, quantity, and extension.

3.2.5 Extraordinary Work. City will not pay Contractor for extraordinary work unless Contractor receives prior written authorization from the Contract Administrator. Failure to do so will result in payment being withheld for services. If approved, Contractor will include an invoice that describes the work performed and the location where the work was performed, and a copy of the Contract Administrator's written authorization.

3.2.6 Reporting Requirements. Contractor must submit the following reports using the City's web-based contract compliance portal. Incomplete and/or delinquent reports may

General Contract Terms and Provisions Revised:

January 16, 2020

OCA Document No. 1685454_2

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I.

cause payment delays, non-payment of invoice, or both. For questions, please view the City's online tutorials on how to utilize the City's web-based contract compliance portal.

3.2.6.1 Monthly Employment Utilization Reports. Contractor and Contractor's subcontractors and suppliers must submit Monthly Employment Utilization Reports by the fifth (5th) day of the subsequent month.

3.2.6.2 Reserved.

3.3 Annual Appropriation of Funds. Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

3.4 Price Adjustments. Based on Contractor's written request and justification, the City may approve an increase in unit prices on Contractor's pricing pages consistent with the amount requested in the justification in an amount not to exceed the increase in the Consumer Price Index, San Diego Area, for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics, or 5.0%, whichever is less, during the preceding one year term. If the CPI-U is a negative number, then the unit prices shall not be adjusted for that option year (the unit prices will not be decreased). A negative CPI-U shall be counted against any subsequent increases in the CPI-U when calculating the unit prices for later option years. Contractor must provide such written request and justification no less than sixty days before the date in which City may exercise the option to renew the contract, or sixty days before the anniversary date of the Contract. Justification in support of the written request must include a description of the basis for the adjustment, the proposed effective date and reasons for said date, and the amount of the adjustment requested with documentation to support the requested change (e.g. CPI-U or 5.0%, whichever is less). City's approval of this request must be in writing.

ARTICLE IV RESERVED

ARTICLE V ADDITIONAL CONTRACTOR OBLIGATIONS

5.1 Reserved.

5.2 Reserved.

5.3 Reserved.

5.4 Reserved.

5.5 Delay. Unless otherwise specified herein, time is of the essence for each and every provision of the Contract. Contractor must immediately notify City in writing if there is, or it is

anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

5.5.1 If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

5.6 Restrictions and Regulations Requiring Contract Modification. Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

5.7 Warranties. All goods and/or services provided under the Contract must be warranted by Contractor or manufacturer for at least twelve (12) months after acceptance by City, except automotive equipment. Automotive equipment must be warranted for a minimum of 12,000 miles or 12 months, whichever occurs first, unless otherwise stated in the Contract. Contractor is responsible to City for all warranty service, parts, and labor. Contractor is required to ensure that warranty work is performed at a facility acceptable to City and that services, parts, and labor are available and provided to meet City's schedules and deadlines. Contractor may establish a warranty service contract with an agency satisfactory to City instead of performing the warranty service itself. If Contractor is not an authorized service center and causes any damage to equipment being serviced, which results in the existing warranty being voided, Contractor will be liable for all costs of repairs to the equipment, or the costs of replacing the equipment with new equipment that meets City's operational needs.

5.8 Industry Standards. Contractor shall provide goods and/or services acceptable to City in strict conformance with the Contract. Contractor shall also provide goods and/or services in accordance with the standards customarily adhered to by an experienced and competent provider of the goods and/or services called for under this Contract using the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Where approval by City, the Mayor, or other representative of City is required, it is understood to be general approval only and does not relieve Contractor of responsibility for complying with all applicable laws, codes, policies, regulations, and good business practices.

5.9 Records Retention and Examination. Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under this Contract. Contractor shall make all such records and documents available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee. Contractor shall make available all requested data and records at reasonable locations within City or County of San Diego at any time during normal business hours, and as often as City deems necessary. If records are not made available within the City or County of San Diego, Contractor shall pay City's travel costs to the location where the records are maintained and shall pay for all related travel expenses. Failure to make requested records available for inspection, copying, or other reproduction, or auditing by the date requested may result in termination of the Contract. Contractor must include this provision in all subcontracts made in connection with this Contract.

5.9.1 Contractor shall maintain records of all subcontracts entered into with all firms, all project invoices received from Subcontractors and Suppliers, all purchases of materials and services from Suppliers, and all joint venture participation. Records shall show name, telephone number including area code, and business address of each Subcontractor and Supplier, and joint venture partner, and the total amount actually paid to each firm. Project relevant records, regardless of tier, may be periodically reviewed by the City.

5.10 Quality Assurance Meetings. Upon City's request, Contractor shall schedule one or more quality assurance meetings with City's Contract Administrator to discuss Contractor's performance. If requested, Contractor shall schedule the first quality assurance meeting no later than eight (8) weeks from the date of commencement of work under the Contract. At the quality assurance meeting(s), City's Contract Administrator will provide Contractor with feedback, will note any deficiencies in Contract performance, and provide Contractor with an opportunity to address and correct such deficiencies. The total number of quality assurance meetings that may be required by City will depend upon Contractor's performance.

5.11 Duty to Cooperate with Auditor. The City Auditor may, in his sole discretion, at no cost to the City, and for purposes of performing his responsibilities under Charter section 39.2, review Contractor's records to confirm contract compliance. Contractor shall make reasonable efforts to cooperate with Auditor's requests.

5.12 Reserved.

5.13 Project Personnel. Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing and approved by the City.

5.13.1 Criminal Background Certification. Contractor certifies that all employees working on this Contract have had a criminal background check and that said employees are clear of any sexual and drug related convictions. Contractor further certifies that all employees hired by Contractor or a subcontractor shall be free from any felony convictions.

5.13.2 Photo Identification Badge. Contractor shall provide a company photo

identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

5.14 Standards of Conduct. Contractor is responsible for maintaining standards of employee competence, conduct, courtesy, appearance, honesty, and integrity satisfactory to the City.

5.14.1 Supervision. Contractor shall provide adequate and competent supervision at all times during the Contract term. Contractor shall be readily available to meet with the City. Contractor shall provide the telephone numbers where its representative(s) can be reached.

5.14.2 City Premises. Contractor's employees and agents shall comply with all City rules and regulations while on City premises.

5.14.3 Removal of Employees. City may request Contractor immediately remove from assignment to the City any employee found unfit to perform duties at the City. Contractor shall comply with all such requests.

5.15 Licenses and Permits. Contractor shall, without additional expense to the City, be responsible for obtaining any necessary licenses, permits, certifications, accreditations, fees and approvals for complying with any federal, state, county, municipal, and other laws, codes, and regulations applicable to Contract performance. This includes, but is not limited to, any laws or regulations requiring the use of licensed contractors to perform parts of the work.

5.16 Contractor and Subcontractor Registration Requirements. Prior to the award of the Contract or Task Order, Contractor and Contractor's subcontractors and suppliers must register with the City's web-based vendor registration and bid management system. The City may not award the Contract until registration of all subcontractors and suppliers is complete. In the event this requirement is not met within the time frame specified by the City, the City reserves the right to rescind the Contract award and to make the award to the next responsive and responsible proposer of bidder.

ARTICLE VI INTELLECTUAL PROPERTY RIGHTS

6.1 Reserved.

6.2 Reserved.

6.3 Reserved.

6.4 Subcontracting. In the event that Contractor utilizes a subcontractor(s) for any portion of the work that comprises the whole or part of the specified Deliverable Materials to the City, the agreement between Contractor and the subcontractor shall include a statement that identifies the Deliverable Materials as a "works for hire" as described in the United States Copyright Act

of 1976, as amended, and that all intellectual property rights in the Deliverable Materials, whether arising in copyright, trademark, service mark or other forms of intellectual property rights, belong to and shall vest solely with the City. Further, the agreement between Contractor and its subcontractor shall require that the subcontractor, if necessary, shall grant, transfer, sell and assign, free of charge, exclusively to City, all titles, rights and interests in and to the Deliverable Materials, including all copyrights, trademarks and other intellectual property rights. City shall have the right to review any such agreement for compliance with this provision.

6.5 Intellectual Property Warranty and Indemnification. Contractor represents and warrants that any materials or deliverables, including all Deliverable Materials, provided under this Contract are either original, or not encumbered, and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If Deliverable Materials provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, City shall have the right, in its sole discretion, to require Contractor to produce, at Contractor's own expense, new non-infringing materials, deliverables or works as a means of remedying any claim of infringement in addition to any other remedy available to the City under law or equity. Contractor further agrees to indemnify, defend, and hold harmless the City, its officers, employees and agents from and against any and all claims, actions, costs, judgments or damages, of any type, alleging or threatening that any Deliverable Materials, supplies, equipment, services or works provided under this contract infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claim of Infringement). If a Third-Party Claim of Infringement is threatened or made before Contractor receives payment under this Contract, City shall be entitled, upon written notice to Contractor, to withhold some or all of such payment.

6.6 Software Licensing. Contractor represents and warrants that the software, if any, as delivered to City, does not contain any program code, virus, worm, trap door, back door, time or clock that would erase data or programming or otherwise cause the software to become inoperable, inaccessible, or incapable of being used in accordance with its user manuals, either automatically, upon the occurrence of licensor-selected conditions or manually on command. Contractor further represents and warrants that all third-party software, delivered to City or used by Contractor in the performance of the Contract, is fully licensed by the appropriate licensor.

6.7 Publication. Contractor may not publish or reproduce any Deliverable Materials, for purposes unrelated to Contractor's work on behalf of the City without prior written consent from the City.

6.8 Royalties, Licenses, and Patents. Unless otherwise specified, Contractor shall pay all royalties, license, and patent fees associated with the goods that are the subject of this solicitation. Contractor warrants that the goods, materials, supplies, and equipment to be supplied do not infringe upon any patent, trademark, or copyright, and further agrees to defend any and all suits, actions and claims for infringement that are brought against the City, and to defend, indemnify and hold harmless the City, its elected officials, officers, and employees from all liability, loss and damages, whether general, exemplary or punitive, suffered as a result of any actual or claimed infringement asserted against the City, Contractor, or those furnishing goods,

materials, supplies, or equipment to Contractor under the Contract.

ARTICLE VII INSURANCE

7.1 Reserved.

7.2 Insurance. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by Contractor, his agents, representatives, employees or subcontractors.

Contractor shall provide, at a minimum, the following:

7.2.1 Commercial General Liability. Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

7.2.2 Commercial Automobile Liability. Insurance Services Office Form Number CA 0001 covering Code 1 (any auto) or, if Contractor has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

7.2.3 Workers' Compensation. Insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

7.2.4 Technology Professional Liability Errors and Omissions Insurance appropriate to the Consultant's profession and work hereunder, with limits not less than \$2,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Vendor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties.

7.2.5 Cyber Liability Insurance, with limits not less than **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Vendor in this agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and

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alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

7.2.6 Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

7.2.6.1 Additional Insured Status. The City, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

7.2.6.2 Primary Coverage. For any claims related to this contract, Contractor's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

7.2.6.3 Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to City.

7.2.6.4 Waiver of Subrogation. Contractor hereby grants to City a waiver of any right to subrogation which the Workers' Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

7.2.6.5 Claims Made Policies (applicable only to professional liability). The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work. Insurance must be maintained, and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.

7.3 Self-Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or City.

7.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A-VI, unless otherwise acceptable to City.

City will accept insurance provided by non-admitted, "surplus lines" carriers only if the carrier is

authorized to do business in the State of California and is included on the List of Approved Surplus Lines Insurers (LASLI list). All policies of insurance carried by non-admitted carriers are subject to all of the requirements for policies of insurance provided by admitted carriers described herein.

7.5 Verification of Coverage. Contractor shall furnish City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

7.6 Special Risks or Circumstances. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

7.7 Additional Insurance. Contractor may obtain additional insurance not required by this Contract.

7.8 Excess Insurance. All policies providing excess coverage to City shall follow the form of the primary policy or policies including but not limited to all endorsements.

7.9 Subcontractors. Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that City is an additional insured on insurance required from subcontractors. For CGL coverage, subcontractors shall provide coverage with a format at least as broad as the CG 20 38 04 13 endorsement.

ARTICLE VIII RESERVED

ARTICLE IX CITY-MANDATED CLAUSES AND REQUIREMENTS

9.1 Contractor Certification of Compliance. By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

9.1.1 Drug-Free Workplace Certification. Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

9.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations: Contractor shall comply with all accessibility

requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

9.1.3 Non-Discrimination Requirements.

9.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP). Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

9.1.3.2 Non-Discrimination Ordinance. Contractor shall not discriminate on the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

9.1.3.3 Compliance Investigations. Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.4 Equal Benefits Ordinance Certification. Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

9.1.5 Contractor Standards. Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

9.1.6 Noise Abatement. Contractor shall operate, conduct, or construct without violating the City’s Noise Abatement Ordinance codified in the SDMC.

9.1.7 Storm Water Pollution Prevention Program. Contractor shall comply with the City’s Storm Water Management and Discharge Control provisions codified in Division 3 of Chapter 4 of the SDMC, as may be amended, and any and all applicable Best Management Practice guidelines and pollution elimination requirements in performing or delivering services at City owned, leased, or managed property, or in performance of services and activities on behalf of City regardless of location.

Contractor shall comply with the City’s Jurisdictional Urban Runoff Management Plan encompassing Citywide programs and activities designed to prevent and reduce storm water pollution within City boundaries as adopted by the City Council on January 22, 2008, via Resolution No. 303351, as may be amended.

Contractor shall comply with each City facility or work site’s Storm Water Pollution Prevention Plan, as applicable, and institute all controls needed while completing the services to minimize any negative impact to the storm water collection system and environment.

9.1.8 Service Worker Retention Ordinance. If applicable, Contractor shall comply with the Service Worker Retention Ordinance (SWRO) codified in the SDMC.

9.1.9 Product Endorsement. Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.

9.1.10 Business Tax Certificate. Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

9.1.11 Equal Pay Ordinance. Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

9.1.11.1 Contractor and Subcontract Requirement. The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

ARTICLE X CONFLICT OF INTEREST AND VIOLATIONS OF LAW

10.1 Conflict of Interest Laws. Contractor is subject to all federal, state and local conflict of interest laws, regulations, and policies applicable to public contracts and procurement practices

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including, but not limited to, California Government Code sections 1090, *et. seq.* and 81000, *et. seq.*, and the Ethics Ordinance, codified in the SDMC. City may determine that Contractor must complete one or more statements of economic interest disclosing relevant financial interests. Upon City's request, Contractor shall submit the necessary documents to City.

10.2 Contractor's Responsibility for Employees and Agents. Contractor is required to establish and make known to its employees and agents appropriate safeguards to prohibit employees from using their positions for a purpose that is, or that gives the appearance of being, motivated by the desire for private gain for themselves or others, particularly those with whom they have family, business or other relationships.

10.3 Contractor's Financial or Organizational Interests. In connection with any task, Contractor shall not recommend or specify any product, supplier, or contractor with whom Contractor has a direct or indirect financial or organizational interest or relationship that would violate conflict of interest laws, regulations, or policies.

10.4 Certification of Non-Collusion. Contractor certifies that: (1) Contractor's bid or proposal was not made in the interest of or on behalf of any person, firm, or corporation not identified; (2) Contractor did not directly or indirectly induce or solicit any other bidder or proposer to put in a sham bid or proposal; (3) Contractor did not directly or indirectly induce or solicit any other person, firm or corporation to refrain from bidding; and (4) Contractor did not seek by collusion to secure any advantage over the other bidders or proposers.

10.5 Hiring City Employees. This Contract shall be unilaterally and immediately terminated by City if Contractor employs an individual who within the twelve (12) months immediately preceding such employment did in his/her capacity as a City officer or employee participate in negotiations with or otherwise have an influence on the selection of Contractor.

ARTICLE XI DISPUTE RESOLUTION

11.1 Mediation. If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

11.2 Selection of Mediator. A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

11.3 Expenses. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

11.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115

through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

11.5 Mediation Results. Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

ARTICLE XII MANDATORY ASSISTANCE

12.1 Mandatory Assistance. If a third-party dispute or litigation, or both, arises out of, or relates in any way to the services provided to the City under a Contract, Contractor, its agents, officers, and employees agree to assist in resolving the dispute or litigation upon City's request. Contractor's assistance includes, but is not limited to, providing professional consultations, attending mediations, arbitrations, depositions, trials or any event related to the dispute resolution and/or litigation.

12.2 Compensation for Mandatory Assistance. City will compensate Contractor for fees incurred for providing Mandatory Assistance. If, however, the fees incurred for the Mandatory Assistance are determined, through resolution of the third-party dispute or litigation, or both, to be attributable in whole, or in part, to the acts or omissions of Contractor, its agents, officers, and employees, Contractor shall reimburse City for all fees paid to Contractor, its agents, officers, and employees for Mandatory Assistance.

12.3 Attorneys' Fees Related to Mandatory Assistance. In providing City with dispute or litigation assistance, Contractor or its agents, officers, and employees may incur expenses and/or costs. Contractor agrees that any attorney fees it may incur as a result of assistance provided under Section 12.2 are not reimbursable.

ARTICLE XIII MISCELLANEOUS

13.1 Headings. All headings are for convenience only and shall not affect the interpretation of this Contract.

13.2 Non-Assignment. Contractor may not assign the obligations under this Contract, whether by express assignment or by sale of the company, nor any monies due or to become due under this Contract, without City's prior written approval. Any assignment in violation of this paragraph shall constitute a default and is grounds for termination of this Contract at the City's sole discretion. In no event shall any putative assignment create a contractual relationship between City and any putative assignee.

13.3 Independent Contractors. Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

13.4 Subcontractors. All persons assigned to perform any work related to this Contract, including any subcontractors, are deemed to be employees of Contractor, and Contractor shall be directly responsible for their work.

13.5 Covenants and Conditions. All provisions of this Contract expressed as either covenants or conditions on the part of City or Contractor shall be deemed to be both covenants and conditions.

13.6 Compliance with Controlling Law. Contractor shall comply with all applicable local, state, and federal laws, regulations, and policies. Contractor's act or omission in violation of applicable local, state, and federal laws, regulations, and policies is grounds for contract termination. In addition to all other remedies or damages allowed by law, Contractor is liable to City for all damages, including costs for substitute performance, sustained as a result of the violation. In addition, Contractor may be subject to suspension, debarment, or both.

13.7 Governing Law. The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof.

13.8 Venue. The venue for any suit concerning solicitations or the Contract, the interpretation of application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California.

13.9 Successors in Interest. This Contract and all rights and obligations created by this Contract shall be in force and effect whether or not any parties to the Contract have been succeeded by another entity, and all rights and obligations created by this Contract shall be vested and binding on any party's successor in interest.

13.10 No Waiver. No failure of either City or Contractor to insist upon the strict performance by the other of any covenant, term or condition of this Contract, nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Contract, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Contract, and each and every covenant, condition, and term hereof shall continue in full force and effect without respect to any existing or subsequent breach.

13.11 Severability. The unenforceability, invalidity, or illegality of any provision of this Contract shall not render any other provision of this Contract unenforceable, invalid, or illegal.

13.12 Drafting Ambiguities. The parties acknowledge that they have the right to be advised by

legal counsel with respect to the negotiations, terms and conditions of this Contract, and the decision of whether to seek advice of legal counsel with respect to this Contract is the sole responsibility of each party. This Contract shall not be construed in favor of or against either party by reason of the extent to which each party participated in the drafting of the Contract.

13.13 Amendments. Neither this Contract nor any provision hereof may be changed, modified, amended or waived except by a written agreement executed by duly authorized representatives of City and Contractor. Any alleged oral amendments have no force or effect. The Purchasing Agent must sign all Contract amendments.

13.14 Conflicts Between Terms. If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

13.15 Survival of Obligations. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

13.16 Confidentiality of Services. All services performed by Contractor, and any sub-contractor(s) if applicable, including but not limited to all drafts, data, information, correspondence, proposals, reports of any nature, estimates compiled or composed by Contractor, are for the sole use of City, its agents, and employees. Neither the documents nor their contents shall be released by Contractor or any subcontractor to any third party without the prior written consent of City. This provision does not apply to information that: (1) was publicly known, or otherwise known to Contractor, at the time it was disclosed to Contractor by City; (2) subsequently becomes publicly known through no act or omission of Contractor; or (3) otherwise becomes known to Contractor other than through disclosure by City.

13.17 Insolvency. If Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the Contract, written notification of the bankruptcy to the Purchasing Agent and the Contract Administrator responsible for administering the Contract. This notification shall be furnished within five (5) days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of City contract numbers and contracting offices for all City contracts against which final payment has not been made. This obligation remains in effect until final payment is made under this Contract.

13.18 No Third-Party Beneficiaries. Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

13.19 Actions of City in its Governmental Capacity. Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

20000114-26-L_HOSTING AND SERVICES AGREEMENT_EMS

Final Audit Report

2025-11-05

Created:	2025-11-05
By:	Lisa Hoffmann (lhoffmann@sandiego.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAKhO1KUtnRW7Gx6nfzYd0Aw2r4ZGh61O

"20000114-26-L_HOSTING AND SERVICES AGREEMENT_EM S" History



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Signer donna@emslab.com entered name at signing as Donna S. Stevenson

2025-11-05 - 4:53:31 PM GMT- IP address: 69.140.179.96



Document e-signed by Donna S. Stevenson (donna@emslab.com)

Signature Date: 2025-11-05 - 4:53:33 PM GMT - Time Source: server- IP address: 69.140.179.96



Agreement completed.

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20000114-26-L_HOSTING AND SERVICES AGREEMENT_Signed EMS

Final Audit Report

2025-11-05

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By:	Lisa Hoffmann (lhoffmann@sandiego.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAaTcf838sxQZ1EH9bg_u0qeGDWg1KzE0j

"20000114-26-L_HOSTING AND SERVICES AGREEMENT_Signed EMS" History

-  Document created by Lisa Hoffmann (lhoffmann@sandiego.gov)
2025-11-05 - 5:46:26 PM GMT- IP address: 156.29.5.177
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Signature Date: 2025-11-05 - 7:12:49 PM GMT - Time Source: server- IP address: 156.29.5.177
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-  Signer mmimada@sandiego.gov entered name at signing as Mark Imada
2025-11-05 - 8:11:25 PM GMT- IP address: 156.29.5.191
-  Document e-signed by Mark Imada (mmimada@sandiego.gov)
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-  Agreement completed.
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