

THIS PRINT COVERS CALENDAR ITEM NO.: 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Finance and Information Technology

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to execute Contract No. SFMTA 2022-38 with Intelx Technologies, ULC to provide the Intelx Software-As-A -Service (SaaS) safety management and database application as well as professional, support, and maintenance services for an amount not to exceed \$4,000,000 and an initial term of five years, and with two options to renew the Agreement for a period of two years each, for a total of four additional years.

SUMMARY:

- On January 1, 2016, the SFMTA Board approved Contract No. SFMTA 2016/29, Safety Management Software and Configuration Services with Intelx Technologies, ULC.
- In 2018, the SFMTA implemented the Intelx application to adhere to Federal and State regulations for maintaining an online Safety Management System.
- The Intelx application is a comprehensive safety management software and database that enables SFMTA to effectively manage safety incidents, audits, hazards, and training.
- On December 17, 2021, The City's Contract Monitoring Division (CMD) approved Intelx as the sole source provider under Administrative Code Section 21.30(d) due to the proprietary nature of the Intelx software and because the maintenance services that SFMTA requires are only available from Intelx.
- Under the SFMTA 2022-38 Agreement, SFMTA wishes to convert the perpetual software and user licenses, configured applications, configured forms, and configured third-party interfaces it acquired under Contract No. SFMTA 2016/29 and its amendments to a Software as a Service (SaaS) based subscription service; and for Contractor to provide professional, support, and maintenance services for the Intelx SaaS Platform.

ENCLOSURES:

1. SFMTAB Resolution
2. SFMTA Contract No. SFMTA 2022-38

APPROVALS:

DIRECTOR



DATE

June 1, 2023

SECRETARY



June 1, 2023

ASSIGNED SFMTAB CALENDAR DATE: June 6, 2023

PURPOSE

Authorizing the Director of Transportation to execute Contract No. SFMTA 2022-38 with Intelx Technologies, ULC to provide the Intelx Software-As-A-Service (SaaS) safety management and database application as well as professional, support, and maintenance services for an amount not to exceed \$4,000,000 and an initial term of five years, and with two options to renew the Agreement for a period of two years each, for a total of four additional years.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

Strategic Plan Goal 4: Make streets safer for everyone.

Transit First Policy 1: To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.

DESCRIPTION

As a public transportation agency, SFMTA must ensure that safety is regarded with the highest priority for both the residents and visitors of San Francisco who rely on SFMTA's services as well as the staff that provide these services. SFMTA is required by both State (GO 164 and 165) and Federal (49 CFR Parts 670-674) regulations to maintain a comprehensive agency safety plan with the overall goal of mitigating safety risks and minimizing safety events. To accomplish this, SFMTA formally adopted its Public Transportation Agency Safety Plan (PTASP) on June 19, 2020. The PTASP identifies the programs and processes to be used for incident management, hazard management, internal safety auditing, and National Transit Database (NTD) reporting. Many of the processes rely on data input by various SFMTA staff followed by downstream consumption of the data for investigation, remediation, analysis, reporting, and litigation. The Intelx application is one of the primary tools through which these efforts are carried out.

As of 2022, more than 2800 SFMTA and City Attorney staff have been on-boarded as users of Intelx. This includes Transit Operators, Transit Inspectors and Field Managers, Station Agents, Division Dispatchers, Transit and Maintenance Trainers, Transit Safety Specialists, Division Managers and Staff, Planners and Analysts, and City Attorney Claims Investigators. Intelx is the primary tool through which almost all Transit front-line workers report and document safety-related events and incidents.

The Intelx project was initially started in 2013 when SFMTA issued a Request for Information for an online Safety Management System (SMS) database. Three vendors responded – TRA, Vigil Master System, and Intelx Technologies. Intelx was eventually selected as the preferred vendor and on December 30, 2014, SFMTA awarded Contract No. SFMTA-2011/12-31 (later updated to SFMTA-2016/29) to Intelx Technologies, Inc. This contract provided access to Intelx on a perpetual licensing model. The primary goals of the contract were to:

- Succeed SFMTA’s legacy TRA TransitSafe application as the Agency’s online SMS
- Remove the dependency on paper forms in favor of electronic data entry wherever possible
- Standardize safety management throughout the Agency by tracking multiple safety management functions under one system and adhering to established workflows
- Provide improved access and reliability for both data providers and data consumers

Configured Intalex Application Release Dates

- October 2, 2017 – Hazards Management, Nonconformance Management, and Audits Management
- November 27, 2018 – Training Management
- December 1, 2020 – Incident Management

The original contract SFMTA-2016/29 has expired and SFMTA would like to adopt a new agreement based on a SaaS subscription rather than perpetual licensing. Subscription pricing is the preferred option because it aligns better with Intalex’s products and services. Additionally, the up-front cost of licenses is significantly lower with subscription pricing. For example, a Full Access (seated) user license in the perpetual model was previously quoted at \$2610 up-front to purchase the license plus a yearly maintenance fee of \$456 to continue using it. Under the subscription model, the same standard user license was quoted at \$870 per year which includes all maintenance costs. Finally, subscription licensing offers more flexibility to add or remove services as the needs of SFMTA changes.

This Contract was procured in accordance with contracting requirements for sole source contracts under Administrative Code Chapter 21.30.

There is no Small Business Entity (SBE) subcontracting participation requirement for this Contract.

The City Attorney has reviewed this report.

STAKEHOLDER ENGAGEMENT

During the initial planning and implementation phases for the Intalex application, key stakeholders from various business units were invited to participate and provide their requirements for the modules utilized by their staff. This included the SFMTA Transit Division, Safety Division, Human Resources, and Training Department as well as the City Attorney’s Office. For the currently proposed contract and switch to a SaaS subscription licensing model, internal stakeholders were engaged to provide feedback on desired changes to the existing modules as well as future use cases. Stakeholder feedback is accounted for by the optional charges in Appendix B of the renewed contract.

ALTERNATIVES CONSIDERED

As this item is a renewal of an already established application, no other alternative applications were considered. Intelix is deeply ingrained in the daily operations of Transit staff. Switching vendors would require new software to be configured to the SFMTA's needs and staff to be trained on the new platform.

FUNDING IMPACT

Intelix Annual SaaS licensing cost starts at \$186,286.56 for the first year with an annual increase of 5% in subsequent years for a total not-to-exceed subscription fee amount of \$2,054,100.75. Any additional licenses will be charged at a per license basis and as-needed configurations will be charged at an hourly rate according the pricing specified in Appendix B of the contract for a total contract value not-to-exceed \$4,000,000.

Contract Budget

Term	Annual Increase	Annual Subscription Fee
Year 1 - July 01, 2023 – June 30, 2024	2.5%	\$186,286.56
Year 2 - July 01, 2024 – June 30, 2025	5%	\$195,600.89
Year 3 - July 01, 2025 – June 30, 2026	5%	\$205,380.93
Year 4 - July 01, 2026 – June 30, 2027	5%	\$215,649.98
Year 5 - July 01, 2027 – June 30, 2028	5%	\$226,432.48
Year 6 (Option Year 1) – July 01, 2028 – June 30, 2029	5%	\$237,754.10
Year 7 (Option Year 2) - July 01, 2029 – June 30, 2030	5%	\$249,641.81
Year 8 (Option Year 3) - July 01, 2030 – June 30, 2031	5%	\$262,123.90
Year 9 (Option Year 4) – July 01, 2031 – June 30, 2032	5%	\$275,230.10
Base SaaS subscription Subtotal		\$2,054,100.75
As-needed Configuration Services and Additional Subscription Subtotal		\$1,945,899.25
Total Contract Amount (Not-to-Exceed)		\$4,000,000.00

This contract will be funded by operating funds budgeted in the Technology division's annual operating budget.

There will be no impact to staffing resources or other agency operations.

ENVIRONMENTAL REVIEW

On May 9, 2023, the SFMTA, under authority delegated by the Planning Department, determined that the Software-As-A-Service (SaaS) Agreement with Intelx Technologies, ULC is not a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

Personal Services Contract (PSC) 45324-21/22 has been approved by the Civil Service Commission (CSC) on 3/21/22.

The City Attorney's Office has reviewed this calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve the request to authorize the Director of Transportation to execute Contract No. SFMTA 2022-38 with Intelx Technologies, ULC to provide the Intelx Software-As-A-Service (SaaS) safety management and database application as well as professional, support, and maintenance services for an amount not to exceed \$4,000,000 and an initial term of five years, and with two options to renew the Agreement for a period of two years each, for a total of four additional years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, SFMTA is required by both Code of Federal Regulations 49CFR Parts 670-674 and California State General Orders GO 164 and 165 to maintain a comprehensive safety plan to mitigate safety risks and minimize safety events; and,

WHEREAS, SFMTA formally adopted its Public Transportation Agency Safety Plan (PTASP) on June 19, 2020 which outlines the Agency's needs for safety-related data; and,

WHEREAS, Intelix enables the SFMTA to collect and analyze data in order to mitigate safety risks and minimize safety events, and is one of the primary tools through which safety-related data is gathered by more than 2000 SFMTA front-line staff; and,

WHEREAS, The existing Intelix contract SFMTA-2016/29 has expired and SFMTA requires continued usage and support for this vital tool; and,

WHEREAS, SFMTA wishes to convert the perpetual software and user licenses, configured applications, configured forms, and configured third-party interfaces it acquired under Contract No. SFMTA 2016/29 and its amendments to a Software as a Service (SaaS) based subscription service; and for Contractor to provide professional, support, and maintenance services for the Intelix SaaS Platform; and,

WHEREAS, The City's Contract Monitoring Division (CMD) has approved Intelix Technologies ULC as a sole source provider under Administrative Code Section 21.30(d); and,

WHEREAS, On May 9, 2023, the SFMTA, under authority delegated by the Planning Department, determined that the Software-As-A-Service (Saas) Agreement with Intelix Technologies, ULC is not a "project" under the California Environmental Quality Act (CEQA) pursuant Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors, and is incorporated herein by reference; and,

WHEREAS, Approval for this Contract was obtained when the Civil Service Commission approved Personal Services Contract (PSC) 45324-21/22 on 3/21/22; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract No. SFMTA 2022-38 with Intalex Technologies, ULC to provide the Intalex Software-As-A-Service (SaaS) safety management and database application as well as professional, support, and maintenance services for an amount not to exceed \$4,000,000 and an initial term of five years, and with two options to renew the Agreement for a period of two years each, for a total of four additional years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 6, 2023.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, California 94103**

**SOFTWARE AS A SERVICE AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND**

**INTELEX TECHNOLOGIES, ULC
Contract No. SFMTA-2022-38**

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**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave., 7th Floor
San Francisco, California 94103**

**SOFTWARE AS A SERVICE AGREEMENT
BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND
INTELEX TECHNOLOGIES, ULC
Contract No. SFMTA-2022-38**

This Agreement is made as of _____, in the City and County of San Francisco (City), State of California, by and between Intelix Technologies, ULC, a Canadian corporation (Contractor), and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA procured Safety Management Software and Configuration Services, including perpetual software and user licenses, configured applications, configured forms, and configured third-party interfaces from Contractor under Contract No. SFMTA-2011/12-31, dated December 30, 2014, and Contract No. SFMTA-2016/29, dated January 1, 2016.

B. Through this Agreement, the SFMTA wishes to contract with Contractor to convert the perpetual software and user licenses, configured applications, configured forms, and configured third-party interfaces to a Software as a Service (SaaS) based subscription service; and for Contractor to provide professional, support, and maintenance services for the Intelix SaaS Platform.

C. The City's Contract Monitoring Division (CMD) approved the Contractor as a sole source for the required services on December 17, 2021.

D. There is no Local Business Enterprise (LBE) subcontracting participation requirement for this Agreement.

E. Contractor represents and warrants that it is qualified to provide the SaaS Application and perform the Services required by City as set forth under this Agreement.

F. The City's Civil Service Commission approved Contract number 45324-21/22 on March 21, 2022.

Now, THEREFORE, the Parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement. Where any word or phrase defined below, or a pronoun in place of the word or phrase, is used in any part of this Agreement, it shall have the

meaning set forth below:

1.1 “**Acceptance**” means notice from the City to Contractor that the SaaS Application meets the specifications and requirements contained in the Documentation and Appendices. City’s Acceptance shall be governed by the procedures set forth in Section 4.3.

1.2 “**Acceptance Period**” means the period allocated by City to test the SaaS Application to determine whether it conforms to the applicable specifications and, if appropriate, properly operates in the defined operating environment, is capable of running on a repetitive basis, and is otherwise in compliance with the service level obligations without failure.

1.3 “**Aggregate Data**” means Anonymous Data combined with anonymized data from other sources.

1.4 “**Anonymous Data**” means the statistical and usage data related to the Services that is derived from anonymizing and aggregating City Data.

1.5 “**Agreement**” or “**Contract**” means this contract document, including all attached appendices, any future amendments, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.6 “**Authorized User**” means a person authorized by City to access the City’s Portal and use the SaaS Application, including any City employee, contractor, or agent, or any other individual or entity authorized by City.

1.7 “**Back-Up Environment**” means Contractor’s back-up Data Center for the SaaS Services.

1.8 “**Business Hours**” means 8:00 a.m. to 5:00 p.m. U.S. Pacific Time.

1.9 “**CCO**” means the SFMTA Contract Compliance Office.

1.10 “**City**” or “**the City**” means the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency.

1.11 “**City Data**” or “**Data**” means that data, as described in Article 13 of this Agreement, which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement, including data resulting from use of the SaaS Service. City Data includes, without limitation, Confidential Information.

1.12 “**City Portal**” means an electronic gateway to a secure entry point via Contractor’s Website that allows City and its Authorized Users to log in to an area where they

can view and download information or request assistance regarding the SaaS Application and Services.

1.13 “**CMD**” means the Contract Monitoring Division of the City.

1.14 “**Confidential Information**” means confidential City information, including, but not limited to, Personally Identifiable Information (PII), protected health information (PHI), or individual financial information (collectively, “Proprietary or Confidential Information”) that is subject to local, state or federal laws restricting the use and disclosure of such information. These laws include, but are not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act/California Consumer Privacy Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M). Confidential Information includes, without limitation, City Data.

1.15 “**Contract Administrator**” means the individual who the SFMTA assigns to administer the Agreement, or his or her designated agent.

1.16 “**Contractor**” or “**Consultant**” means Intelx Technologies, ULC, 70 University Avenue, Suite 800, Toronto, ON, Canada.

1.17 “**Contractor Project Manager**” means the individual specified by Contractor pursuant to Section 4.2.1 hereof, as the Project Manager authorized to administer this Agreement on Contractor’s behalf.

1.18 “**Contractor’s Website**” means the Website that provides an Authorized User access to the SaaS Application Services.

1.19 “**Customer Data**” means all electronic data or information submitted by Customer to be stored or processed in connection with the Services.

1.20 “**C&P**” means SFMTA Contracts and Procurement.

1.21 “**Data Breach**” means any access, destruction, loss, theft, use, modification or disclosure of City Data by an unauthorized party or that is in violation of the Agreement terms and/or applicable local, state or federal law.

1.22 “**Data Center(s)**” means a physical location within the United States where Contractor (or its subcontractor(s)) houses and operates the hardware (including computer

servers, routers, and other related equipment) on which Contractor hosts on the Internet the SaaS Application and City Data pursuant to this Agreement.

1.23 “Day” (whether or not capitalized) means a calendar day, unless otherwise indicated.

1.24 “Default Storage Capacity” means the maximum allowable aggregate size of the City Data that may be stored on Contractor’s Platform, which is 50 gigabytes, and the maximum allowable aggregate size of the City Data that may be stored in the ACTS Service production and non-production environment, which is 100 gigabytes.

1.25 “Deliverables” means Contractor’s work product resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including, without limitation, the work product described in the “Scope of Services,” attached as Appendix A. Deliverables shall not include Contractor’s SaaS environment.

1.26 “Deliverable Data” means Project Data that is identified in Appendix A, and required to be delivered to the City.

1.27 “Director” means the Director of Transportation of the SFMTA or his or her designee.

1.28 “Disabling Code” means computer instructions or programs, subroutines, code, instructions, data or functions (including but not limited to viruses, worms, date bombs or time bombs) including but not limited to other programs, data storage, computer libraries and programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function, that alter, destroy, inhibit, damage, interrupt, interfere with or hinder the operation of the City’s access to the SaaS Services through Contractor’s Website and/or Authorized User's processing environment, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating.

1.29 “Documentation” means technical publications provided by Contractor to City relating to use of the SaaS Application, such as reference, administrative, maintenance, and programmer manuals, including, but not limited to, technical publications provided by Contractor to City pursuant to Contract No. SFMTA-2011/12-31, dated December 30, 2014, and Contract No. SFMTA-2016/29 dated January 1, 2016, and all related amendments.

1.30 “Effective Date” means the date upon which the City’s Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.31 “End User” means an Authorized User who accesses Contractor’s Website and uses the SaaS Application and Services.

1.32 “Hosting Partner” means a third-party provider of hosting services that operates a certified hosting center equivalent to SSAE16 Type II SOC2 certification.

1.33 “Internet” means that certain global network of computers and devices commonly referred to as the “internet,” including, without limitation, the World Wide Web.

1.34 “Low-Complexity Application” shall have the meaning set forth in Appendix B.

1.35 “Mandatory City Requirements” means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.36 “Open Source Software” means software with either freely obtainable source code, a license for modification, or permission for free distribution.

1.37 “Party” and “Parties” mean the City and Contractor, either collectively or individually.

1.38 “Performance Credit” means credit due to City by Contractor with regard to Contractor’s service level obligations in Appendix C (Service Level Obligations).

1.39 “Personally Identifiable Information (PII)” means any information about an individual, including information that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that can reasonably be linked to an individual, such as medical, educational, financial, and employment information.

1.40 “Purchase Order” means the written order issued by the City notifying the Contractor of the Effective Date.

1.41 “Precedence” means that, notwithstanding the terms of any other document executed by the Parties as a part of this Agreement, the terms of this Agreement shall control over any discrepancy, inconsistency, gap, ambiguity, or conflicting terms set forth in any other Contractor pre-printed document.

1.42 “Project Data” means data that is first produced in the performance of this Agreement.

1.43 SaaS Application/SaaS Software/Software” mean the licensed and hosted computer program and associated documentation, as listed in this Agreement and Appendices,

and any modification or Upgrades or modifications to the program(s), residing in Contractor's servers that provides the SaaS Services that may be accessed by Authorized Users through the Internet. All Software, revisions and versions provided by Contractor shall be subject to the terms and conditions of this Agreement, including any amendments thereto.

1.44 "SaaS Application Patch" means an update to the SaaS Application comprised of code inserted (or patched) into the code of the SaaS Application, and which may be installed as a temporary fix between full releases of a SaaS Application Revision or SaaS Application Version. Such a patch may address a variety of issues including without limitation fixing a Software bug, installing new drivers, addressing new security vulnerabilities, addressing software stability issues, and upgrading the Software. SaaS Application Patches are included in the annual payments made by City to Contractor for the SaaS Services under this Agreement.

1.45 "SaaS Issue" means a problem with the SaaS Services identified by the City that requires a response by Contractor to resolve.

1.46 "SaaS Maintenance Services" means the activities to investigate, resolve SaaS Application and Services issues and correct product bugs arising from the use of the SaaS Application and Services in a manner consistent with the published specifications and functional requirements defined during implementation.

1.47 "SaaS Services" means the Services performed by Contractor to host the SaaS Application to provide the functionality listed in the Documentation.

1.48 "SaaS Severity Level" means a designation of the effect of a SaaS Issue on the City.

1.49 "SaaS Software Error" means any failure of SaaS Software to conform in all material respects to the requirements of this Agreement or Contractor's published specifications.

1.50 "SaaS Software Error Correction" means either a modification or addition that, when made or added to the SaaS Software, brings the SaaS Software into material conformity with the published specifications, or a procedure or routine that, when observed in the regular operation of the SaaS Software, avoids the practical adverse effect of such nonconformity.

1.51 "SaaS Software Revision" means an update to the current SaaS Software Version of the SaaS Software code that consists of minor enhancements to existing features and code corrections. SaaS Software Revisions are provided and included with the annual service payments made by City to Contractor for the SaaS Service.

1.52 "SaaS Software Version" means the base or core version of the SaaS Software that contains significant new features and significant fixes and is available to the City. SaaS Software Versions may occur as the SaaS Software architecture changes or as new technologies

are developed. The nomenclature used for updates and upgrades consists of major, minor, build, and fix and these correspond to the following digit locations of a release, 1, 2, 3, 4, an example of which would be NCC 7.4.1.3, where the 7 refers to the major release, the 4 refers to the minor release, the 1 refers to the build, and the 4 refers to a fix. All SaaS Software Versions are provided and included as part of this Agreement upon request or approval from City for the upgrade.

1.53 “Scheduled SaaS Maintenance” means the time (in minutes) during the month, as measured by Contractor, in which access to the SaaS Services is scheduled to be unavailable for use by the City due to planned system maintenance and major version upgrades.

1.54 “San Francisco Municipal Transportation Agency” or “SFMTA” means the agency of City with jurisdiction over surface transportation in San Francisco, as provided under Article VIII A of the City’s Charter.

1.55 “Services” means the work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

1.56 “SFMTA Project Manager” means the individual specified by the SFMTA pursuant to Section 4.2.1 hereof, as the Project Manager authorized to administer this Agreement on the City’s behalf.

1.57 “Successor Service Provider” means a new service provider, if any, selected by City in the event the SaaS Services are terminated under this Agreement.

1.58 “Task Order” means a written directive from the SFMTA to the Contractor to perform specified work or deliver a specified product.

1.59 “Transition Services” means that assistance reasonably requested by City to effect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider.

Article 2 Term of the Agreement

2.1 Term. The term of this Agreement shall commence on the Effective Date and expire five years from the Effective Date, unless earlier terminated as otherwise provided herein.

2.2 Options to Renew. The City has two options to renew the Agreement for a period of two years each, for a total of four additional years. The City may extend this

Agreement beyond the expiration date by exercising an option at the Director of Transportation's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5 (Modification of this Agreement).

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller in the form of a Purchase Order, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 Guaranteed Maximum Costs. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5 (Modification of this Agreement).

3.3 Compensation.

3.3.1 Calculation of Charges. Contractor shall provide an invoice to the SFMTA for goods and/or Services to be provided as further described in the subsections 3.3.1 (a), (b), and (c) below, unless a different schedule is set out in Appendix B (Calculation of Charges). Compensation shall be made for goods and/or Services identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes have been satisfactorily delivered and/or performed. In no event shall the amount

of this Agreement exceed **Four Million Dollars (\$4,000,000)**. The breakdown of charges associated with this Agreement appears in Appendix B. In no event shall City be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

(a) **Base SaaS Annual Subscription Fees.** The breakdown of costs associated with the Base SaaS Annual Subscription Fees appear in Appendix B. The Base SaaS Annual Subscription Fees shall be payable yearly in advance. Contractor shall provide an invoice to the SFMTA on an annual basis for Base SaaS Annual Subscription Fees related to the succeeding year. In no event shall the amount for the Base SaaS Total Annual Subscription Fees under this Agreement exceed Two Million, Fifty-Four Thousand, One Hundred and One Dollars (\$2,054,101). There shall be no annual increases in the SaaS Annual Subscription Fees other than those expressly described in Appendix B.

(b) **Optional Additional Product Subscription Purchases.** The breakdown of costs for the purchase of optional Additional Product Subscriptions appears in Appendix B. Contractor shall prorate the Additional Product Subscription fees to adjust for a partial year of the subscription. Thereafter, renewal of Additional Product Subscription fees shall be payable yearly in advance. Contractor shall invoice Additional Product Subscriptions fees as a separate invoice line item not to be combined with Base SaaS Total Annual Subscription Fees.

(c) **As-Needed Software Configuration and Training Services.** For As-Needed Software Configuration and Training Services Contractor performs under separate task orders, the fixed fully burdened hourly labor rates per Agreement year are set forth in Appendix B. Contractor shall provide an invoice to the SFMTA for As-Needed Software Configuration and Training Services requested by the SFMTA and delivered in the immediately preceding month. Compensation shall be made for Services identified in the invoice that the Director of Transportation, in his or her sole discretion, concludes have been satisfactorily performed.

3.3.2 Payment Limited to Satisfactory Services and Delivery of Goods.

Contractor is not entitled to any payments from City until the SFMTA approves the goods and/or Services delivered pursuant to this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory goods and/or Services even if the unsatisfactory character may not have been apparent or detected at the time such payment was made. The City may reject goods and/or Services delivered under this Agreement that do not conform to the requirements of this Agreement. In such case, Contractor must replace the non-conforming goods and/or Services without delay and at no cost to the City.

3.3.3 Withhold Payments. If Contractor fails to provide goods and/or Services in accordance with Contractor's obligations under this Agreement, the City may

withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the City's Controller and the SFMTA and include a unique invoice number and a specific invoice date. City will make payment as specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of goods delivered or Services performed, sales/use tax (if applicable), contract payment terms, and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.5 Payment Terms.

(a) **Payment Due Date:** Unless the SFMTA notifies the Contractor that a dispute exists, Payment shall be made within 30 Days, measured from (1) the delivery of goods and/or the rendering of services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted the electronic payment to Contractor.

(b) Reserved. (Payment Discount Terms)

(c) No additional charge shall accrue against City in the event City does not make payment within any time specified by Contractor.

3.3.6 Reserved. (LBE Payment and Utilization Tracking System)

3.3.7 Getting Paid by the City for Goods and/or Services .

(a) The City utilizes the Paymode-X[®] service offered by Bank of America Merrill Lynch to pay City contractors. Contractor must sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit http://portal.paymode.com/city_countyofsanfrancisco.

(b) At the option of the City, Contractor may be required to submit invoices directly in the City's financial and procurement system (PeopleSoft) via eSettlement. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information on eSettlement. For access to PeopleSoft eSettlement, submit a request through sfemployeeportalsupport@sfgov.org.

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during Business Hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6 Reserved. (Payment of Prevailing Wages)

Article 4 SaaS Services and Resources

4.1 SaaS Licensed Software. Subject to the terms and conditions of this Agreement, including City's payment of the Base SaaS Annual Subscription Fees, Contractor grants City and Authorized Users a renewable, non-exclusive, royalty-free, and worldwide license to access, display, and execute the SaaS Application and SaaS Services during the Term of this Agreement and any renewals thereof, if any.

4.1.1 Click-Wrap Disclaimer. No "click to accept" agreement that may be required for the City and/or Authorized Users' access to the SaaS Services or Contractor's Website and no "terms of use" or "privacy policy" referenced therein or conditioned for use of the SaaS Services or Contractor's Website shall apply. Only the provisions of this Agreement as amended from time to time shall apply to City and/or Authorized Users for access thereto and use thereof. The Parties acknowledge that City and/or each Authorized User may be required to click "Accept" as a condition of access to the SaaS Services through the Contractor's Website, but the provisions of such "click to accept" agreement and other terms (including Terms of Use and Privacy Policy) referenced therein shall be null and void for City and/or each such Authorized User. The foregoing does not apply to the City's own click-wrap agreements in the event the City chooses to have Contractor include terms of use, terms or service, privacy policies, or similar requirements drafted and approved by the City.

4.1.2 SaaS Application Title. City acknowledges that title to each SaaS Application and SaaS Services shall at all times remain with Contractor, and that City has no rights in the SaaS Application or SaaS Services except those expressly granted by this Agreement.

4.1.3 Authorized APIs. City shall be permitted to access and use Contractor's SaaS Application Program Interfaces (APIs) when Contractor has made such APIs commercially available to its customers to develop and modify, as necessary, macros and user interfaces for use with any existing or future City systems and infrastructure. For purposes of this Agreement, such development shall be deemed an authorized modification but will not be supported by Contractor unless provided for in this Agreement. Functionality and compatibility of City-developed macros will be the sole responsibility of City. Any such macros or user interfaces developed by City shall become the property of City. All flat-file exchanges will be over an encrypted file transport service (ftps/vsftpd/scp/sftp) to a secure private ftp site.

4.1.4 Proprietary Markings. City agrees not to remove or destroy any proprietary markings or proprietary legends placed upon or contained within the SaaS Application or any related materials or Documentation.

4.2 Optional Additional Product Subscription Purchases and As-Needed Software Configuration and Training Services. The Parties have identified and priced certain optional Additional Product Subscriptions and As-Needed Software Configuration and Training Services in Appendix B. The SFMTA may add such optional Additional Product Subscriptions and As-Needed Software Configuration and Training Services via Task Order, as further described in Section 4.5.

4.3 Account Managers; Services Contractor Agrees to Perform.

4.3.1 Account Managers. Contractor and the SFMTA shall each designate an Account Manager, who shall be accessible by telephone throughout the duration of the Agreement and shall be available 8:00 a.m. to 5:00 p.m. PT, Monday through Friday, excluding City-designated holidays. These hours may be adjusted by mutual agreement between the SFMTA and Contractor. Contractor shall use its best efforts to maintain the same Project Manager throughout the duration of the Agreement. However, if Contractor needs to replace its Project Manager, Contractor shall provide the SFMTA written notice thereof at least 45 Days prior to the date the Project Manager shall be replaced. Notwithstanding the foregoing, Contractor will have the right to appoint temporary Account Managers in connection with short term unavailability, sick leave or reasonable vacations. Contractor shall notify the SFMTA in advance of any such temporary appointments. The SFMTA may require Contractor to replace its Account Manager, by giving Contractor notification thereof and the SFMTA’s objective reasons for the replacement.

Account Manager: Ludy Reveron
Account Executive, Sales
70 University Avenue, Suite 900
Toronto, ON, M5J 2M4
ludy.reveron@intelex.com
(416) 640-2317

Customer Success Manager: Sabrina DePinto
Team Lead, CMS
70 University Avenue, Suite 900
Toronto, ON, M5J 2M4
Sabrina.depinto@intelex.com
(416) 646-2702

SFMTA’s Project Manager: Michael Chan
SFMTA IT Enterprise Application Manager
1 South Van Ness, 3rd Floor
San Francisco, CA 94103
Michael.Chan@sfmta.com

4.3.2 Services Contractor Agrees to Perform. During the Term of this Agreement, Contractor shall perform and provide all of the services set forth in Appendix A (Scope of Services). Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5 (Modification of this Agreement).

(a) **Transition of Perpetual Software and User Licenses, Configured Applications, Configured Forms, Configured Third-Party Interfaces to SaaS Application.** Contractor shall convert perpetual software and user licenses, configured applications, configured forms, and configured third-party interfaces purchased and developed under Contract Nos. SFMTA-2011/12-31 and SFMTA-2016/29 to the Intelx SaaS Platform (i.e., SaaS Application) in accordance with Appendix A (Scope of Services).

(b) **Maintenance and Support.** Contractor shall provide Maintenance/Support in accordance with Appendix A. Maintenance and Support Services include the provision of upgrades and a service desk, during the term of this Agreement for the SaaS Application(s).

(c) **Hosting.** Contractor shall provide hosting in accordance with Appendix A, including the following:

(i) **Hosting Infrastructure.** Contractor shall provide all hosting infrastructure, including, but not limited to, hardware, software and other equipment, at Contractor's hosting site as required to provide hosting and deliver the SaaS Application and Services.

(ii) **Security.** Contractor shall ensure that all electronic transmission or exchange of City Data will be encrypted using current industry standards. Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes stated in the Agreement. City Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of Contractor not involved in administration of this Agreement, unless otherwise permitted in this Agreement. Remote access to view City data by Contractor for development and technical support purposes from outside the United States is allowed as long as City Data remains hosted solely on systems residing in the continental United States.

(iii) **Access.** Contractor shall provide Authorized Users 24/7 access to the SaaS Application(s).

(iv) **Disaster Recovery and Business Continuity.** Contractor shall provide Disaster Recovery Services and assist with Business Continuity as described in Section 14.4 and Appendix D.

4.3.3 Service Level Obligations. Contractor shall comply with the support (24/7 service desk) and Service Level Obligations described in Appendix C.

4.4 Acceptance Testing; Document Delivery; Training.

4.4.1 Prior to each SaaS Software version upgrade, revision, or patch as outlined in Appendix A, the Contractor shall, at SFMTA's request, deploy the upgrade, revision, or patch to the City's Intellex pre-production environment. SFMTA shall test the upgrade, revision, or patch in the pre-production environment and identify and report any issues to Contractor in accordance with Appendix A. Upon successful testing, SFMTA will request that Contractor deploy the upgrade, revision, or patch to the SaaS Application. SFMTA may elect to defer a specific version upgrade, revision, or patch if SFMTA identifies a business-critical issue or bug until the specific issue or bug is remedied either in the same version or a later version of the software. A business-critical issue or bug is one where a workflow or underlying function ceases to work properly after an upgrade, revision, or patch and for which there is no immediate fix or viable workaround. If an upgrade, revision, or patch is deemed by the Contractor to be critical to the continued functioning of the SaaS and not deferrable, the Contractor shall assist SFMTA with resolving identified issues or bugs at no additional cost to SFMTA. Additionally, the Contractor shall provide or make available documentation pertinent to new versions as outlined in 4.4.2. Any changes made outside the scope of Appendix A will require a separate Professional Services Task Order and Acceptance Testing provisions shall be agreed upon as part of the scope of work for that task.

4.4.2 Document Delivery. Prior to each SaaS Software version upgrade, revision, or patch, the SFMTA can subscribe to the release of notes when they are available. These release notes are made available to the SFMTA in the community site. Unless otherwise specified, the SFMTA shall have the right to make any number of additional copies of the Documentation at no additional charge and distribute the Documentation as needed.

4.5 Task Order Process. The SFMTA may issue task orders on an as-needed basis for optional Additional Product Subscriptions or As-Needed Software Configuration and Training Services in accordance with the process set forth below.

4.5.1 As-Needed Software Configuration. As-Needed Software Configuration covered under this Agreement includes, but is not limited to, standard or custom configuration of the Intellex platform typically performed by solutions architects and/or consultants. Examples include, but are not limited to, building and configuring application objects, form fields, action handlers, business rules, views, view actions, workflows, and high-level source code editing through the application front-end tools.

4.5.2 Task Order Request. The SFMTA will define task requirements and provide to Contractor a task order request. The task order request will include: (a) a description of the scope of the As-Needed Services or Additional Product Subscriptions the SFMTA seeks to procure, including specific Deliverables, if any; (b) the deadline to respond to the task order

request; and (c) the expected timeline (including specific milestones, if any) to complete the As-Needed Services or deliver the Additional Product Subscriptions.

4.5.3 Contractor Request for Information. Upon receiving a task order request, Contractor shall request in writing any information and data it requires to complete the task order proposal (described below) and perform the task order. Contractor shall identify the timing and priority for which this information and data will be required. The Parties shall reach agreement as to the availability and delivery time for this data and information during initial task order negotiations.

4.5.4 Task Order Proposal. By no later than the deadline set forth in the task order request, Contractor shall prepare and submit a task order proposal that includes the following items:

(a) A work plan that includes a detailed description, by subtask, of the As-Needed Services to be performed or Additional Product Subscriptions to be delivered under the task order;

(b) A high-level timeline to complete the task order;

(c) A summary of the types of resources Contractor proposes to work on the task order, and for each resource, a description of the tasks they will perform;

(d) A detailed cost estimate that includes the following, as applicable:

(i) For As-Needed Services, estimated hours and fully burdened hourly labor rates by position (as listed in Appendix B). The following labor costs are not allowed and shall not be included in Contractor's cost estimate: labor to prepare monthly invoices; labor to manage subcontractors; overtime, unless approved in advance by the SFMTA. If the SFMTA approves overtime hours, they shall be billed at the billing rates listed and not at one and one-half times the billing rate;

(ii) For Additional Product Subscription purchases, the type or name of Product, unit cost, quantity, delivery schedule, and payment schedule; and

(iii) Estimated reasonable out-of-pocket expenses (direct costs).

4.5.5 Negotiation of Task Order Price. The SFMTA Program Manager will review the selected task order proposal and, together with the Contractor, negotiate and

finalize pricing for the task order. Pricing for task orders for As-Needed Services shall be the negotiated maximum number of hours using the hourly labor rates set forth in Appendix B, plus any SFMTA-approved out-of-pocket expenses, subject to a total not-to-exceed cost. For avoidance of doubt, amounts paid by the SFMTA to Contractor shall be for hours worked and invoiced, subject to caps on hours and cost set forth in the task order. Pricing for tasks orders for Additional Product Subscription purchases shall be limited to the breakdown of costs included in Appendix B.

4.5.6 Record of Negotiation. The SFMTA Program Manager will document the task order negotiations and any agreement in a record of negotiations.

4.5.7 Notice to Proceed. The SFMTA Program Manager will issue and send to Contractor a written Notice to Proceed, Task Order number, and Purchase Order. Contractor shall use the Task Order number when submitting invoices to the Program Manager for payment. Contractor shall not commence work under any Task Order until it receives a written Notice to Proceed for the Task Order.

4.5.8 Changes to Task Order Pricing. Task Order pricing shall not be modified unless there is a material change in the Task Order's scope of services, in which case a new task order proposal, pricing negotiation, record of negotiations, and Notice to Proceed shall be required before SFMTA approves the change in pricing.

4.5.9 Failure to Agree on Terms of Task Order. In the event that the SFMTA and Contractor cannot reach agreement on the terms of the Task Order, the SFMTA may either cancel the Task Order or may direct the Contractor to proceed with the task under such conditions as City may require to assure quality and timeliness of the task performance. Under no circumstances may the Contractor refuse to undertake a City-ordered task.

4.6 Statement of Work Requirements. Contractor shall perform the As-Needed Software Configuration and Training Services under a Statement of Work issued by Intelix in accordance with the process described above. A Statement of Work, Professional Services estimates, and estimated duration to perform the activities will be agreed upon in advance of the start of work on the activities in accordance with the terms and conditions of this Agreement.

4.7 Qualified Personnel . Contractor shall use only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at

City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.8 Subcontracting.

4.8.1 Contractor may subcontract portions of the Services only upon prior written approval of the SFMTA. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All subcontracts must incorporate the terms of Article 10 (Additional Requirements Incorporated by Reference) and Article 13 (Data and Security) of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.8.2 Contractor will not employ subcontractors.

4.9 Independent Contractor; Payment of Employment Taxes and Other Expenses.

4.9.1 Independent Contractor. For the purposes of this Section 4.6, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during Business Hours, accurate books and accounting records demonstrating Contractor's compliance with this Section. Should City determine that Contractor, or any agent or employee of Contractor, is not

performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.9.2 Payment of Employment Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.6 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this Section.

4.10 Assignment. The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (a) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into contracts with City; and (c) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall

immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

Article 5 Insurance; Indemnity and Warranties

5.1 Insurance.

5.1.1 Required Coverages. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness.

(d) Reserved. (Professional Liability Coverage)

(e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the Agreement and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

(f) Cyber and Privacy Insurance with limits of not less than \$1,000,000 per claim. Such insurance shall include coverage for liability arising from theft,

dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

(g) Reserved. (Pollution Liability Insurance)

5.1.2 Additional Insured Endorsements

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(c) Reserved. (Pollution Auto Liability Insurance Additional Insured Endorsement)

5.1.3 Reserved. (Workers Compensation Insurance Waiver of Subrogation Endorsement)

5.1.4 Primary Insurance Endorsements

(a) The Commercial General Liability policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Reserved. (Pollution Liability Insurance Primary Insurance Endorsement)

5.1.5 Other Insurance Requirements

(a) Thirty Days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to the

City address set forth in Section 11.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(d) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements from insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and Contractor as additional insureds.

5.2 Indemnification

5.2.1 General Indemnification. Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally

identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

5.2.2 Infringement Indemnification. If notified promptly in writing of any judicial action brought against City based on an allegation that City's use of the SaaS Application and Services infringes a patent, copyright, or any right of a third-party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), Contractor will hold City harmless and defend such action at its own expense. Contractor will pay the costs and damages awarded in any such action or the cost of settling such action, provided that Contractor shall have sole control of the defense of any such action and all negotiations or its settlement or compromise, only if Contractor accepts the defense and hold harmless requirements without reservation, and provided, however, that Contractor shall not agree to any injunctive relief or settlement that obligates the City to perform any obligation, make an admission of guilt, fault or culpability or incur any expense, without City's prior written consent, which shall not be unreasonably withheld or delayed. If notified promptly in writing of any informal claim (other than a judicial action) brought against City based on an allegation that City's use of the SaaS Application and/or Services constitutes Infringement, Contractor will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that Contractor shall have sole control of the resolution of any such claim and all negotiations for its settlement, only if Contractor accepts the defense and hold harmless requirements without reservation, and provided, however, that Contractor shall not agree to any injunctive relief or settlement that obligates the City to perform any obligation, make an admission of guilt, fault or culpability or incur any expense, without City's prior written consent, which shall not be unreasonably withheld or delayed. In the event a final injunction is obtained against City's use of the SaaS Application and Services by reason of Infringement, or in Contractor's opinion City's use of the SaaS Application and Services is likely to become the subject of Infringement, Contractor may at its option and expense: (a) procure for City the right to continue to use the SaaS

Application and Services as contemplated hereunder, (b) replace the SaaS Application and Services with a non-infringing, functionally equivalent substitute SaaS Application and Services, or (c) suitably modify the SaaS Application and Services to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the SaaS Application and Services. If none of these options is reasonably available to Contractor, then this Agreement may be terminated at the option of either Party hereto and Contractor shall refund to City all amounts paid under this Agreement for the license of such infringing SaaS Application and/or Services. Any unauthorized modification or attempted modification of the SaaS Application and Services by City or any failure by City to implement any improvements or updates to the SaaS Application and Services, as supplied by Contractor, shall void this indemnity unless City has obtained prior written authorization from Contractor permitting such modification, attempted modification or failure to implement. Contractor shall have no liability for any claim of Infringement based on City's use or combination of the SaaS Application and Services with products or data of the type for which the SaaS Application and Services was neither designed nor intended to be used, unless City has obtained prior written authorization from Contractor permitting such use.

5.3 Warranties of Contractor

5.3.1 Warranty of Authority; No Conflict. Each Party warrants to the other that it is authorized to enter into this Agreement and that its performance of the Agreement will not conflict with any other agreement.

5.3.2 Warranty of Performance. Contractor warrants that when fully implemented, the SaaS Application to be configured and provided under this Agreement shall perform in accordance with the specifications applicable thereto. With respect to all Services to be performed by Contractor under this Agreement, including Services outlined in Appendix A, Contractor warrants that it will use reasonable care and skill. All services shall be performed in a professional, competent and timely manner by Contractor personnel appropriately qualified and trained to perform such services. In the event of a breach of the foregoing warranty relating to any service under this Agreement within 12 months from the date of provision of such services, Contractor shall, at its sole cost and expense, re-perform such services.

5.3.3 Compliance with Description of Services. Contractor represents and warrants that the SaaS Application and Services specified in this Agreement, and all updates and improvements to the SaaS Application and Services, will comply in all material respects with the specifications and representations specified in the Documentation (including performance, capabilities, accuracy, completeness, characteristics, specifications, configurations, standards, functions and requirements) as set forth (i) herein or in any amendment hereto, and (ii) the updates thereto.

5.3.4 Title. Contractor represents and warrants to City that it is the lawful owner or license holder of all Software, materials and property identified by Contractor as Contractor-owned and used by it in the performance of the SaaS Services contemplated hereunder and has the right to permit City access to or use of the SaaS Application and Services and each component thereof. To the extent that Contractor has used Open Source Software (OSS) in the development of the SaaS Application and Services, Contractor represents and warrants that it is in compliance with any applicable OSS license(s) and is not infringing.

5.3.5 Disabling Code. Contractor represents and warrants that the SaaS Application and Services, and any information, reports or other materials provided to Authorized Users as a result of the operation of the SaaS Application and Services, including future enhancements and modifications thereto, shall be free of any Disabling Code.

5.3.6 Warranty of Suitability for Intended Purpose. Contractor warrants that the SaaS Application and Services will be suitable for the intended purpose of this Agreement.

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1 (PAYMENT) OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 Liability for Incidental and Consequential Damages. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

Article 7 Payment of Taxes

7.1 Contractor to Pay All Taxes. Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Possessory Interest Taxes. Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code Section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest (see, e.g., Rev. & Tax. Code Section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 Withholding. Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this

Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination; Disposition of Content; Survival

8.1 Termination for Cause and/or Convenience. City shall have the right, without further obligation or liability to Contractor:

8.1.1 To immediately terminate this Agreement if Contractor commits any breach of this Agreement or default (see Section 8.2 below) and fails to remedy such breach or default within 10 Days after written notice by City of such breach (10-day cure period), in which event, Contractor shall refund to City all amounts paid under this Agreement for the SaaS Application and/or Services in the same manner as if City ceased to use the SaaS Application due to infringement under Section 5.2.2. At City's sole election, the 10-day cure period will *not* apply to termination for data breach and/or breach of confidentiality; or

8.1.2 To terminate this Agreement upon 30 Days' prior written notice for City's convenience and without cause, provided that except for termination due to an uncured breach as set forth in this Section and in the event of Infringement, City shall not be entitled to a refund of any amounts previously paid under this Agreement.

8.2 Each of the following shall constitute an immediate event of default (Event of Default) under this Agreement:

8.2.1 Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

- 3.5 Submitting False Claims.
- 4.10 Assignment
- Article 5 Insurance; Indemnity and Warranties
- Article 7 Payment of Taxes
- 10.10 Alcohol and Drug-Free Workplace
- 11.10 Compliance with Laws
- Article 13 Data and Security

8.2.2 Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured

within 15 Days after written notice thereof from the SFMTA to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, the SFMTA may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

8.2.3 Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

8.2.4 A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.5 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City. This Section 8.2.5 shall survive termination of this Agreement.

8.3 Bankruptcy. In the event that Contractor shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to, any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at City's option this

Agreement shall terminate and be of no further force and effect. Upon termination of this Agreement pursuant to this Section, Contractor shall within 48 hours return City's Data in an agreed-upon machine readable format. Such file formats include, without limitation, plain text files such as comma-delimited tables, extensible markup language, and SQL relational tables. Once Contractor has received written confirmation from City that City's Data has been successfully transferred to City, Contractor shall within 30 Days clear, purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five Days that such clear, purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

8.4 Transition Services and Disposition of City Data. Upon expiration or termination of the SaaS Services under this Agreement:

8.4.1 Contractor may immediately discontinue the SaaS Services and City shall immediately cease accessing the SaaS Application and Services. Contractor shall within 30 Days of the expiration or termination of the SaaS Services return City's data in an agreed-upon machine readable format. Such file formats include, without limitation, plain text files such as comma-delimited tables, extensible markup language, and SQL relational tables. This provision shall also apply to all City Data that is in the possession of subcontractors, agents or auditors of Contractor. Such data transfer shall be done at no cost to the City. Once Contractor has received written confirmation from the SFMTA that City's Data has been successfully transferred to City, Contractor shall within 30 Days clear or purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five Days that such clear or purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

8.4.2 Contractor shall provide to City and/or Successor Service Provider assistance requested by the SFMTA to effect the orderly transition of the SaaS Services, in whole or in part, to City or to Successor Service Provider. During the transition period, SaaS and City Data access shall continue to be made available to City without alteration. Such Transition Services shall be provided on a time and materials basis if the SFMTA opts to return to its own servers or SFMTA chooses a Successor Service Provider. Transition costs may include: (a) developing a plan for the orderly transition of the terminated SaaS Services from Contractor to Successor Service Provider; (b) if required, transferring the City Data to Successor Service Provider; (c) using commercially reasonable efforts to assist the SFMTA in acquiring any necessary rights to legally and physically access and use any third-party technologies and documentation then being used by Contractor in connection with the

Services; (d) using commercially reasonable efforts to make available to the SFMTA, pursuant to mutually agreeable terms and conditions, any third-party services then being used by Contractor in connection with the SaaS Services; and, (e) such other activities upon which the Parties may agree. Notwithstanding the foregoing, should City terminate this Agreement due to Contractor's material breach, the SFMTA may elect to use the Services for a period of no greater than six months from the date of termination at a reduced rate of 20% percent off of the then-current Services Fees for the terminated Services. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section 8.4.2 shall survive the termination of this Agreement.

8.5 Remedies. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.6 Notice of Default. Any notice of default must be sent by registered mail to the address set forth in Section 11.1 (Notices to the Parties).

8.7 Non-Waiver of Rights. The omission by either Party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other Party at the time designated, shall not be a waiver of any such default or right to which the Party is entitled, nor shall it in any way affect the right of the Party to enforce such provisions thereafter.

8.8 Survival

8.8.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services and Delivery of Goods
3.4	Audit and Inspection of Records
3.5	Submitting False Claims
4.9	Independent Contractor; Payment of Employment Taxes and Other Expenses
Article 5	Insurance; Indemnity and Warranties
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.4	Transition Services and Disposition of City Data
8.7	Non-Waiver of Rights
9.1	Ownership of Results
9.2	Works for Hire

11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability
13.2.1	Proprietary or Confidential Information of City
13.2.5	Notification of Legal Requests

8.9 Data Rights

8.9.1 Preexisting Data of each Party that will be included as a Deliverable under this Agreement will be identified in Appendix A. Preexisting Data of the City may only be used by Contractor for purposes of the Scope of Services of this Agreement, unless such data is otherwise publicly available.

8.9.2 The City shall have the unrestricted right to use the Deliverable Data and delivered Project Data, including all Preexisting Data provided as a Deliverable under this Agreement.

Article 9 Rights In Deliverables

9.1 Ownership of Results. Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 Works for Hire. If, in connection with Services, Contractor or its subcontractors creates Deliverables, including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval,

Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (Mandatory City Requirements) are available at http://www.amlegal.com/codes/client/san-francisco_ca/ .

10.2 Conflict of Interest. By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*) and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 Prohibition on Use of Public Funds for Political Activity. In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 Consideration of Salary History. Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements

10.5.1 Nondiscrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Administrative Code 12B.2 Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 Reserved. (Local Business Enterprise and Non-Discrimination in Contracting Ordinance)

10.7 Minimum Compensation Ordinance. If Administrative Code Chapter 12P applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

10.8 Health Care Accountability Ordinance. If San Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.9 Reserved. (First Source Hiring Program)

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (a) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (b) a candidate for that City elective office, or (c) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.12 Reserved. (Slavery Era Disclosure).

10.13 Reserved. (Working with Minors)

10.14 Reserved. (Consideration of Criminal History in Hiring and Employment Decisions)

10.15 Reserved. (Public Access to Nonprofit Records and Meetings)

10.16 Food Service Waste Reduction Requirements. Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 Reserved. (Distribution of Beverages and Water)

10.18 Tropical Hardwood and Virgin Redwood Ban. Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.19 Reserved. (Preservative-Treated Wood Products).

Article 11 General Provisions

11.1 Notices to the Parties. Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: Michael Chan
SFMTA IT Enterprise Application Manager
San Francisco Municipal Transportation Agency
1 South Van Ness, 3rd Floor
San Francisco, CA 94103
Michael.Chan@sfmta.com
(415) 579-9735

To Contractor: ATTN: Legal Department
70 University Avenue, Suite 800,
Toronto, ON, M5J 2M4
legal@intelex.com

Any notice of default must be sent by overnight delivery service or courier, with a signature obtained at delivery. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Americans with Disabilities Act . Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and

further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement. Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990 (ADA), as amended (42 U.S.C. Sec. 1201 et seq.) and Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), Web Content Accessibility Guidelines (WCAG) 2.0 Levels A and AA; and WCAG 1.0 Level AA, to the extent these guidelines include additional requirements that are not included in and are not inconsistent with WCAG 2.0 Levels A and AA and WCAG 2.1, as updated from time to time.

11.3 Incorporation of Recitals. Recitals are incorporated into and made part of this Agreement.

11.4 Sunshine Ordinance. Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1 (Notices to Parties) regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contract Administrator a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contract Administrator shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the Parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in

accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this Section.

11.6.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.8 Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.9 Entire Agreement. This Contract sets forth the entire agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5 (Modification of this Agreement).

11.10 Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

11.12 Cooperative Drafting. This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.13 Order of Precedence. Contractor agrees to perform and provide the services described below in accordance with the terms and conditions of this Agreement and implementing task orders. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the SFMTA, Contractor's proposal, and Contractor's printed terms, respectively.

Article 12 SFMTA Specific Terms

12.1 Large Vehicle Driver Safety Training Requirements.

12.1.1 Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at www.SFMTA.com/largevehicletainingstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

12.1.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

Article 13 Data and Security

13.1 City Data

13.1.1 Ownership of City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data, and any derivative works of the City Data, is the exclusive property of the City. Contractor warrants that the SaaS Application does not maintain, store, or export the City Data using a database structure, data model, entity relationship diagram or equivalent.

13.1.2 Use of City Data. Contractor agrees to hold City Data received from, or created or collected on behalf of, the City in strictest confidence. Contractor shall not use or disclose City's Data except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work that involves using, sharing, or storage of, City's Data outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data, including user tracking and exception City Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis. Notwithstanding the foregoing, and for the avoidance of doubt, Contractor may collect aggregated, deidentified usage data ("Aggregate Data"). Contractor may use Aggregate Data for the purpose of monitoring usage and optimizing performance of the SaaS services. Aggregate Data will not include any personal information and shall only be utilized for the legitimate interest of delivering the SaaS platform and services to the City.

13.1.3 Access to and Extraction of City Data. City shall have access to City Data 24-hours a day, 7 days a week. The SaaS Application shall be capable of creating a digital, reusable copy of the City Data, in whole and in parts, as a platform independent and machine-readable file. Such file formats include, without limitation, plain text files such as comma-delimited tables, extensible markup language, and SQL relational tables. City Data that is stored in binary formats, including without limitation portable document format, JPEG, and portable network graphics files, shall instead be reproducible in the same format in which it was loaded into the SaaS Application. This reusable copy must be made available in a publicly documented and non-proprietary format, with a clearly-defined data structure and a data dictionary for all terms of art contained in the data. For purposes of this section,

non-proprietary formats include formats for which royalty-free codecs are available to End Users. Contractor warrants that City shall be able to extract City Data from the SaaS Application on demand, but no later than 24-hours of City's request, without charge and without any conditions or contingencies whatsoever (including but not limited to the payment of any fees to Contractor).

13.1.4 Backup and Recovery of City Data. As a part of the SaaS Services, Contractor is responsible for maintaining a backup of City Data and for an orderly and timely recovery of such data in the event of data corruption or interruption of the SaaS Services. Unless otherwise described in Appendix A, Contractor shall maintain a contemporaneous backup of City Data that can be recovered within the requirements in this Agreement and as outlined in Appendix D and maintaining the security of City Data as further described herein. Contractor's backup of City Data shall not be considered in calculating storage used by City.

13.1.5 Data Breach; Loss of City Data. In the event of any Data Breach, SaaS Software Error, omission, negligence, misconduct, breach, or other act that compromises or is suspected to compromise the security, confidentiality, or integrity of City Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of City Data, Contractor shall, as applicable:

(a) Notify City immediately following discovery, but no later than 24 hours, of becoming aware of such occurrence or suspected occurrence. Contractor's report shall identify:

- (i) the nature of the unauthorized access, use or disclosure;
- (ii) the Confidential Information accessed, used or disclosed;
- (iii) the person(s) who accessed, used, disclosed and/or received protected information (if known);
- (iv) what Contractor has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure; and
- (v) what corrective action Contractor has taken or will take to prevent future unauthorized access, use or disclosure.

(b) In the event of a suspected Breach, Contractor shall keep the City informed regularly of the progress of its investigation until the uncertainty is resolved;

(c) Contractor shall coordinate with the City in its breach response activities, including, without limitation:

(i) Immediately preserve any potential forensic evidence relating to the breach, and remedy the breach as quickly as circumstances permit;

(ii) Promptly (within two business days) designate a contact person to whom the City will direct inquiries, and who will communicate Contractor responses to City inquiries;

(iii) As rapidly as circumstances permit, apply appropriate resources to remedy the breach condition, investigate, document, restore City service(s) as directed by the City, and undertake appropriate response activities;

(iv) Provide status reports to the City on Data Breach response activities, either on a daily basis or a frequency approved by the City;

(v) Make all reasonable efforts to assist and cooperate with the City in its Breach response efforts;

(vi) Ensure that knowledgeable Contractor staff are available on short notice, if needed, to participate in City-initiated meetings and/or conference calls regarding the Breach; and

(vii) Cooperate with City in investigating the occurrence, including making available all relevant records, logs, files, data reporting, and other materials required to comply with applicable law or as otherwise required by City.

(d) In the case of personally identifiable information (PII) or protected health information (PHI), at City's sole election, (a) notify the affected individuals as soon as practicable, but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five Days of the occurrence; or, (b) reimburse City for any costs in notifying the affected individuals;

(e) In the case of PII, provide third-party credit and identity monitoring services to each of the affected individuals who comprise the PII for the period required to comply with applicable law, or, in the absence of any legally required monitoring services, for no fewer than 24 months following the date of notification to such individuals;

(f) Perform or take any other actions required to comply with applicable law as a result of the occurrence;

(g) Recreate lost City Data in the manner and on the schedule set by City without charge to City; and

(h) Provide to City a detailed plan within 10 Days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence.

(i) Notification to affected individuals, as described above, shall comply with applicable law, be written in plain language, and contain (at the City's election) information that may include: name and contact information of Contractor's (or City's) representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor.

(j) Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

(k) City shall conduct all media communications related to such Data Breach, unless in its sole discretion, City directs Contractor to do so.

13.2 Proprietary or Confidential Information

13.2.1 Proprietary or Confidential Information of City. Contractor understands and agrees that the performance of the work or services under this Agreement may involve access to City Data that is Confidential Information. Contractor and any subcontractors or agents shall use Confidential Information only in accordance with all applicable local, state and federal laws restricting the access, use and disclosure of Confidential Information, and only as necessary in the performance of this Agreement. Contractor's failure to comply with any requirements of local, state or federal laws restricting access, use and disclosure of Confidential Information shall be deemed a material breach of this Agreement, for which City may terminate the Agreement. In addition to termination or any other remedies set forth in this Agreement or available in equity or law, the City may bring a false claim action against the Contractor pursuant to Chapters 6 or 21 of the Administrative Code, or debar Contractor. Contractor agrees to include all of the terms and conditions regarding Confidential Information contained in this Agreement in all subcontractor or agency contracts providing services under this Agreement.

13.2.2 Obligation of Confidentiality. Subject to San Francisco Administrative Code Section 67.24(e), any state open records or freedom of information statutes, and any other applicable laws, Contractor agrees to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise

dispose of, give or disclose such Confidential Information to third-parties other than its employees, agents, or authorized subcontractors who have a need to know in connection with this Agreement, or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. Contractor agrees to advise and require its respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.

13.2.3 Nondisclosure. Contractor agrees and acknowledges that it shall have no proprietary interest in any proprietary or Confidential Information and will not disclose, communicate or publish the nature or content of such information to any person or entity, nor use, except in connection with the performance of its obligations under this Agreement or as otherwise authorized in writing by the City, any of the Confidential Information it produces, receives, acquires or obtains from the disclosing Party. Contractor shall take all necessary steps to ensure that the Confidential Information is securely maintained. Contractor's obligations set forth herein shall survive the termination or expiration of this Agreement. In the event Contractor becomes legally compelled to disclose any of the Confidential Information, it shall provide the City with prompt notice thereof and shall not divulge any information until the City has had the opportunity to seek a protective order or other appropriate remedy to curtail such disclosure. If such actions by the disclosing Party are unsuccessful, or the disclosing Party otherwise waives its right to seek such remedies, the receiving Party shall disclose only that portion of the Confidential Information that it is legally required to disclose.

13.2.4 Litigation Holds. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

13.2.5 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery, requests, and other legal requests (Legal Requests) related to City's Data under this Agreement, or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

13.2.6 Cooperation to Prevent Disclosure of Confidential Information. Contractor shall use its best efforts to assist the City in identifying and preventing any

unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, Contractor shall advise the City immediately in the event Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Contractor will cooperate with the City in seeking injunctive or other equitable relief against any such person.

13.2.7 Remedies for Breach of Obligation of Confidentiality. Contractor acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the City, which damage may be inadequately compensable in the form of monetary damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available, to include, at the sole election of City, the immediate termination of this Agreement, without liability to City.

13.2.8 Surrender of Confidential Information upon Termination. Upon termination of this Agreement, including but not limited to expiration of the term, early termination or termination for convenience, Contractor shall, within 30 Days from the date of termination, return to City any and all Confidential Information received from the City, or created or received by Contractor on behalf of the City, which are in Contractor's possession, custody, or control. The return of Confidential Information to City shall follow the timeframe and procedure described further in this Agreement (Article 8).

13.2.9 Data Security. To prevent unauthorized access of City Data,

(a) Contractor shall at all times during the Term provide and maintain up-to-date security with respect to (a) the Services, (b) Contractor's Website, (c) Contractor's physical facilities, (d) Contractor's infrastructure, and (e) Contractor's networks.

(b) Contractor shall provide security for its networks and all Internet connections consistent with industry best practices, and will promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs.

(c) Contractor will maintain appropriate safeguards to restrict access to City's Data to those employees, agents or service providers of Contractor who need the information to carry out the purposes for which it was disclosed to Contractor.

(d) For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., most current industry standard encryption for transport and storage, such as the National Institute of Standards and Technology's Internal Report 7977 or Federal Information Processing Standards [FIPS] 140-2 [Security Requirements for Cryptographic Modules] or FIPS-197 or successors, intrusion

prevention/detection or similar barriers) and secure authentication (e.g., password protected) access to the City's Confidential Information and hosted City Data.

(e) For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of City Data.

(f) City Data shall be encrypted at rest and in transit with controlled access.

(g) Contractor will establish and maintain any additional physical, electronic, administrative, technical and procedural controls and safeguards to protect City Data that are no less rigorous than accepted industry practices (including, as periodically amended or updated, the International Organization for Standardization's standards: ISO/IEC 27001:2005 – Information Security Management Systems – Requirements and ISO-IEC 27002:2005 – Code of Practice for International Security Management, NIST Special Publication 800-53 Revision 4 or its successor, NIST Special Publication 800-18 or its successor, the Information Technology Library (ITIL) standards, the Control Objectives for Information and related Technology (COBIT) standards, or other applicable industry standards for information security), and shall ensure that all such controls and safeguards, including the manner in which Confidential Information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws, as well as the terms and conditions of this Agreement.

(h) Contractor warrants to the City compliance, in performing its obligations hereunder, with the following (as periodically amended or updated) as applicable:

- (i) The California Information Practices Act/California Consumer Privacy Act (Civil Code §§ 1798, et seq);
- (ii) The European General Data Protection Regulation (GDPR);
- (iii) Relevant security provisions of the Internal Revenue Service (IRS) Publication 1075, including the requirements that Data not traverse networks located outside of the United States;
- (iv) Relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCI DSS) including the PCI DSS Cloud Computing Guidelines;
- (v) Relevant security provisions of the Social Security Administration (SSA) Document Electronic Information

Exchange Security Requirement and Procedures for State and Local Agencies Exchanging Electronic Information with the Social Security Administration;

- (vi) Relevant security provisions of the Criminal Justice Services (CJIS) Security policy; and
- (vii) Relevant security provisions of the Medi-Cal Privacy and Security Agreement between the California Department of Health Care Services and the County of San Francisco.

13.2.10 Data Privacy and Information Security Program. Without limiting Contractor’s obligation of confidentiality as further described herein, Contractor shall establish and maintain a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (i) ensure the security and confidentiality of the City Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the City Data; (iii) protect against unauthorized disclosure, access to, or use of the City Data; (iv) ensure the proper disposal of City Data; and, (v) ensure that all of Contractor’s employees, agents, and subcontractors, if any, comply with all of the foregoing.

13.2.11 City’s Right to Termination for Deficiencies. City reserves the right, at its sole election, to immediately terminate this Agreement, without limitation and without liability, if City reasonably determines that Contractor fails or has failed to meet its obligations under this Article 13.

13.2.12 Data Transmission. Contractor shall ensure that all electronic transmission or exchange of system and application data with City and/or any other parties expressly designated by City shall take place via encrypted secure means (e.g., HTTPS or SFTP or most current industry standard established by NIST). Contractor shall also ensure that all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor shall ensure that no City Data of any kind shall be copied, modified, destroyed, deleted, transmitted, exchanged or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by City. Contractor is prohibited from accessing City Data from outside the continental United States.

13.3 American Institute of Certified Public Accounts (AICPA) Audit Reports. .

13.3.1 Contractor shall provide to City, on an annual basis, an SSAE 18 SOC 2, Type 2 Report, to be conducted by an independent third party (“Audit Reports”) (if

Contractor is using a hosting service provider, Contractor shall provide such Audit Reports it receives from its service provider or providers) as follows: (a) the Audit Reports shall include a 365 day (12-month) testing period; and (b) the Audit Reports shall be available to City no later than thirty (30) days after they are received by Contractor. If Contractor receives a so-called “negative assurance opinion,” or the annual Audit Report finds a material data privacy or information security issue, Contractor shall notify City of such opinion within three Days of receipt by Contractor. Contractor shall implement reasonably required safeguards as identified by any audit of Contractor’s data privacy and information security program or promptly notify City in writing if Contractor is unable to implement mitigation measures to address the issue(s). Upon any such notification, City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.

13.3.2 Audit of Contractor’s Policies. Contractor agrees to make its policies, procedures and practices regarding Data Security available to City, if needed, and agrees that City reserves the rights, including, but not limited to, making a site visit, scanning for malicious codes, and hiring a third-party to perform a security audit if City determines that the Audit Report is unsatisfactory.

13.3.3 Information Security Audits. Contractor must contract with an independent third party to perform yearly information security audits of their primary and backup Data Centers. The annual audits must include an outside penetration/vulnerability test, and internal penetration and vulnerability tests with the third-party directly on the internal network. The summary results of the audits must be shared with the City. All audit findings must be remedied.

13.3.4 Audit Findings. Contractor shall implement reasonably required safeguards as identified by City or by any audit of Contractor’s data privacy and information security program.

13.3.5 Reserved. (Payment Card Industry (“PCI”) Requirements

Article 14 Force Majeure

14.1 Liability. No Party shall be liable for delay in the performance of its obligations under this Agreement if and to the extent such delay is caused, directly or indirectly, by: fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, or any other cause beyond the reasonable control of such Party (a “Force Majeure Event”). In the case of a Force Majeure Event, Contractor shall immediately commence disaster recovery services as described in Section 14.4.

14.2 Duration. In a Force Majeure Event, the non-performing Party shall be excused from further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and such Party continues to use its best efforts to recommence performance or observance whenever and to whatever extent possible without delay. Any Party so delayed in its performance shall immediately notify the Party to whom performance is due by telephone (to be confirmed in writing within two Days of the inception of such delay) and describe at a reasonable level of detail the circumstances causing such delay.

14.3 Effect. If a Force Majeure Event substantially prevents, hinders, or delays performance of the Services as critical for more than 15 consecutive Days, then at City's option: (i) City may terminate any portion of this Agreement so affected and the charges payable hereunder shall be equitably adjusted to reflect those terminated Services; or (ii) City may terminate this Agreement without liability to City or Contractor as of a date specified by City in a written notice of termination to Contractor. Contractor shall not have the right to any additional payments from City for costs or expenses incurred by Contractor as a result of any force majeure condition that lasts longer than three Days.

14.4 Disaster Recovery. In the event of a disaster, as defined below, Contractor shall provide disaster recovery services in accordance with the provisions of the disaster recovery plan attached as Appendix D hereto, or as otherwise set forth in this Agreement or any Statement of Work. Notwithstanding Section 14.1, a Force Majeure Event shall not excuse Contractor of its obligations for performing disaster recovery services as provided in this Section. In the event that a disaster occurs and Contractor fails to restore the hosting services within 24 hours of the initial disruption to Services, City may, in its discretion, deem such actions to be a material default by Contractor incapable of cure, and City may immediately terminate this Agreement. For purposes of this Agreement, a "disaster" shall mean an interruption in the hosting services or the inability of Contractor to provide City with the SaaS Application and hosting services for any reason that could not be remedied by relocating the SaaS Application and hosting services to a different physical location outside the proximity of its primary Data Center.

Article 15 Appendices

15.1 Additional Appendices. The following appendices are attached and incorporated into this Agreement as though fully set forth herein and together form the complete Agreement between the Parties:

Appendices:

- A. Scope of Services
- B. Calculation of Charges
- C. Service Level Obligations
- D. Disaster Recovery Plan

Article 16 MacBride And Signature

16.1 MacBride Principles -Northern Ireland. The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day first mentioned above.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Jeffrey P. Tumlin Director of Transportation</p> <p>Authorized By: Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary to the Board</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ Lillian Levy Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Intelix Technologies, ULC</p> <hr/> <p>Ahsan Ali Vice President, Finance</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: 0000048683</p>
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Appendix A Scope of Services

Contractor shall convert the perpetual software and user licenses, configured applications, configured forms, and configured third-party interfaces developed under Contract Nos. SFMTA-2011/12-31 and SFMTA-2016/29 to a Software as a Service (SaaS) based subscription service, and provide professional, support, and maintenance services for the Intelex SaaS Platform as set forth in this Appendix A.

Project Background

Contractor previously configured its software application services to deploy a Web-Based Safety Management Database for managing various SFMTA incidents (the System). The System was developed under Contract Nos. SFMTA-2011/12-31 and SFMTA-2016/29 (the Prior Agreements). Under these Prior Agreements, as part of developing the System, Contractor configured applications, forms, and third-party interfaces. Under Contract No. SFMTA-2016/29, the SFMTA had access to Contractor's software application through perpetual software and user licenses. The purpose of this Agreement is to convert the SFMTA perpetual software and user licenses and the System (which includes the configured applications, forms, and third-party interfaces) to Contractor's SaaS-based subscription service and for Contractor to provide professional, support, and maintenance services for the Intelex SaaS Platform.

I. Transition of Perpetual Software and User Licenses, Configured Applications, Configured Forms, and Configured Third-Party Interfaces to SaaS Application

Contractor shall convert perpetual software and user licenses, configured applications, configured forms, and configured third-party interfaces purchased and developed under Contract Nos. SFMTA-2011/12-31 and SFMTA-2016/29 to Intelex's SaaS-based subscription Platform (i.e., SaaS Application).

A. Perpetual Software Licenses to be transitioned to SaaS Application

Contractor shall transition the following perpetual software licenses to the SaaS Application:

1. MOD512 Audits with Checklists
2. MOD083 EHS Incident Management
3. MOD070 Nonconformance Management
4. MOD040 Operational Risk Management/Hazard
5. MOD007 Training Management
6. APP012 Fragment Application Objects
7. IPT004 Data Import and Update Tool
8. OTR030 Intelex Open Pass API

B. Software User Licenses to be transitioned to SaaS Application

Contractor shall transition the following software user licenses to the SaaS Application:

1. Full Access Users – 65 Licenses
2. Standard Concurrent Access Users – 40 Licenses
3. Supervisor Concurrent Access Users – 40 Licenses
4. System Administrator User – 5 Licenses

C. Configured Applications and Forms

The SFMTA shall continue to have access to the following configured forms and applications as part of SFMTA's subscription to the SaaS Application:

Configured Applications:

1. Incident Management
2. Nonconformance Management
3. Hazard Management
4. Training Management
5. Audit Management
6. Corrective Actions

Configured Forms

1. Incident Management
 - a. Operator/Driver Form
 - b. Transit Inspector Form
 - c. Blind Claims Form
 - d. Station Operations Form
 - e. Master Transit Safety Incident (MTSI) Form
 - f. Cause Analysis Form
 - g. Collision Service Interruption Form
2. Nonconformance Management
 - a. Nonconformance Form
3. Hazard Management
 - a. Hazard Form
 - b. External Hazard Form
4. Training Management
 - a. Course Library
 - b. Instructors
 - c. Scheduled Sessions
 - d. Independent Sessions
 - e. Training Data

5. Audit Management
 - a. Audit Types
 - b. Audits
 - c. Findings
6. Corrective Actions
 - a. Corrective Actions for MTSI
 - b. Corrective Actions for Nonconformance
 - c. Corrective Actions for Hazards
 - d. Corrective Actions for Audits

D. Configured Third-Party Interfaces

Contractor shall ensure that the SaaS Application continues to facilitate the following third-party interfaces:

1. Human Resources Database Interface (HRDB) (Intelex EDIS Process)
2. Vehicles Import Interface (Intelex Data Import Tool)
3. Single Sign-On (Microsoft SAML Integration)
4. DocuSign Integration (Intelex API)
5. OrbCAD Integration (Intelex API)

II. SaaS Application & Hosted Services

Contractor shall set up and provide for the term of this Agreement the SaaS Application and SaaS Services, including the Intelex SaaS Platform, converted licenses and items listed in Section I of this Appendix A and all components, hardware, other Software, firmware, and other equipment necessary to host and deliver the SaaS Application and Hosted Services as follows:

A. Software

The City's use of Contractor's Software operating on hosted equipment located at Contractor's facility and/or any Data Center as further outlined under Section II.I (SaaS Data Centers) of this Appendix A. This includes the SaaS Application, the functionality for which shall at minimum:

1. Enable electronic collection and analysis of SFMTA Safety Incident Reports, creation and monitoring of correction actions, training records, and employee injuries.
2. Generate reports and dashboards through the use of the licensed modules.
3. Allow 24/7 Authorized User access to the Intelex Platform to create, edit, and complete workflows, review records, and run reports.

4. Provide the ability for SFMTA Administrators to create and modify objects and workflows as needed.
5. Provide SFMTA Administrators access to the Intelex API to perform CRUD (Create, Read, Update, and Delete) operations.

B. Remote Software

Contractor shall provide the City access to and use of a remote software tool for the City's management of Authorized Users, access rights and other similar role-based controls as they pertain to the SaaS Application and SaaS Services. The method of access will be published through the External Database Integration System ("EDIS") (or successor portal) and be made available to Authorized Users with elevated privileges.

C. Back-Up of City's Data

1. Contractor shall provide on-line hourly data retention for SaaS Software operation and functionality.
2. Contractor shall provide incremental City Data backups at a minimum of every four hours to an off-site location other than the primary hosting center.
3. Contractor shall provide weekly, off-site backups with a duration that matches the agreed-upon backup schedule and retention to a location other than the primary hosting center. Off-site backups must include previous eight weeks.

D. SaaS Environments

The SaaS Application and Hosted Services shall be hosted in a certified and secure Tier-3 data hosting center.

Contractor shall provide:

1. A single Back-up Environment available as needed to serve as the backup or "failover" environment for the SaaS and Hosted Services.
2. A single test environment available to the City and Contractor for the evaluation and eventual promotion of SaaS Software updates, patches, fixes or otherwise deemed tests. The test environment shall perform at 50% or better of production environment.

F. Reporting

Contractor shall provide electronic notification of any incidents or breaches that had occurred within the environment or to the hosted application within 48 hours. In the event of a breach, Contractor shall follow the procedures set forth in Section 13.1.5 of the Agreement.

G. Availability of SaaS Services

Contractor (or its Hosting Service contractor) shall host the **SaaS Services** on computers owned or controlled by Contractor (or its contractor) and shall provide the City with access to both a production environment with SaaS Application and data and a test environment with SaaS Application via Internet-access to use according to the terms herein.

1. Hosted System Uptime: Other than Scheduled SaaS Maintenance Services as outlined in Section III, emergency maintenance described below, Force Majeure as described in the Agreement, and lack of Internet availability as described below, Contractor shall provide uptime to the SaaS Application and SaaS Services to achieve a service level availability of no less than 99.9%.

2. Scheduled SaaS Maintenance

a. Contractor shall conduct Scheduled SaaS Maintenance during the following hours: Saturdays between 12 AM (Pacific Time) and 8 AM (Pacific Time), with the same exclusions noted in subsection 1, above.

b. Scheduled SaaS Maintenance shall not exceed an average of four hours per month over a 12-month period except for major scheduled upgrades.

3. Unscheduled SaaS Maintenance: Contractor shall use commercially reasonable efforts to prevent more than one hour of continuous down time during Business Hours in any month for which unscheduled SaaS maintenance is required. If Contractor fails to meet this obligation for a period of three successive calendar months, Contractor shall furnish City with a Performance Credit in the amount of 10% of the Services Fees (as calculated on a monthly basis for the reporting month).

4. Emergency Maintenance: If Force Majeure Events or emergencies arise or continue, Contractor shall be entitled to take any actions that Contractor, in good faith, determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the SaaS systems or the SaaS Software. Such emergency maintenance may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the SaaS Software by City is made available. Contractor shall endeavor to provide advance written notice of such emergency maintenance to City as soon as is reasonably possible.

5. Notice of Unavailability: In the event there will be more than 30 minutes down time of any SaaS or Hosted Service components for any reason, including, but not limited to Scheduled SaaS Maintenance or emergency maintenance, Contractor shall provide notice to users by posting a web page that indicates that the site is temporarily unavailable and to please come back later. Contractor shall also provide advanced e-mail notice to itapplicationsupport@sfmta.com

which will include at least a brief description of the reason for the down time and an estimate of the time when City can expect the site to be up and available.

H. Changes in Functionality

During the term of this Agreement, Contractor shall not reduce or eliminate functionality in SaaS Services. Where Contractor has reduced or eliminated functionality in SaaS Services, City, in its sole election, shall: (i) have, in addition to any other rights and remedies under this Agreement or at law, the right to immediately terminate this Agreement and be entitled to a return of any prepaid fees; or, (ii) determine the value of the reduced or eliminated functionality, and Contractor shall immediately adjust the Services fees accordingly on a prospective basis. Where Contractor increases functionality in the SaaS Services, such functionality shall be provided to City without any increase in the Services fees.

I. SaaS Data Centers

1. Control: The method and means of providing the Services shall be under the exclusive control, management, and supervision of Contractor, giving due consideration to the requests of City. Contractor, or any previously approved subcontractor, shall provide the Services (including data storage) solely from within the continental United States and on computing and data storage devices residing in the United States.

2. Data Center Standards

a. Contractor's Data Centers shall have fully redundant and diverse network paths to City endpoints. Data Centers shall be located in geographically different seismic zones characterized by the lowest predicted chance of damage as defined by the US Geological Survey Earthquake Hazards Program.

b. Environmental systems must monitor/detect temperature, humidity, fluid leaks, fire/smoke/particulate and have accompanying suppression systems. Fire suppression systems should be dry pipe. Power should be fully conditioned to avoid spikes and other aberrations that can damage equipment. Temporary power units, such as generators, must be in place to support SaaS Services in the event of a power outage for up to three calendar days, and fuel replenishment contracts must be in place to keep temporary power operational for longer periods.

3. Location: The location of the approved Data Centers that will be used to host the SaaS Application are as follows:

Primary Tier 3 data center:
Rackspace / Dallas-Ft. Worth, TX

Back-up Tier 2 data center:
Rackspace / Ashburn, VA

4. Replacement Hosted Provider: In the event Contractor changes the foregoing Hosted Provider, Contractor shall provide City with prior written notice of said change and disclose the name and location of the replacement Hosted Provider. The replacement Hosted Provider shall be a reputable Hosted Provider comparable to Contractor's current Hosted Provider, and said replacement Hosted Provider shall be located within the United States. The replacement Hosted Provider shall perform a SSAE 18, SOC 2, Type 2 Report Audit Report at least annually, in accordance with Section 13.3 of this Agreement.

5. Notice of Change: If the location of the Data Center used to host the SaaS Application is changed, Contractor shall provide City with written notice of said change at least 60 Days prior to any such change taking place. Contractor shall disclose the address of the new facility, which shall be within the United States. The Data Centers referenced above are subcontractors that must be approved by City.

6. Subcontractors: Contractor shall not enter into any subcontracts for the performance of the Services, or assign or transfer any of its rights or obligations under this Agreement, without City's prior written consent and any attempt to do so shall be void and without further effect and shall be a material breach of this Agreement. Contractor's use of subcontractors shall not relieve Contractor of any of its duties or obligations under this Agreement.

III. SaaS Maintenance Services

A. The SaaS Software maintained under this Agreement shall be the SaaS Software set forth in this Appendix A.

B. The following SaaS Maintenance Services are included as part of this Agreement:

1. Contractor Software Version Upgrades, Software Revisions and Patches. Contractor shall provide and implement all SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches to ensure: (a) that the functionality of the SaaS Software and Services, as described in the Documentation, is available to Authorized Users; (b) that the functionality of the SaaS Software and Services is in accordance with the representations and warranties set forth herein, including but not limited to, the SaaS Software and Services conforming in all material respects to the specifications, functions, descriptions, standards, and criteria set forth in the Documentation; (c) that the Service Level Standards can be achieved; and (d) that the SaaS Software and Services work with the non-hosted browser version.

a. Planning: Contractor must assist the City with the planning and logistics of upgrades and updates.

b. Technical Assistance: Contractor must provide technical assistance regarding release notes, new functionality, and new application workflows.

c. Deployment: Deployment of these revisions will be mutually agreed upon between Contractor and City.

d. Software Release: Release of Software revisions as defined will be conducted on a schedule as determined by Contractor. Contractor shall provide no less than a 30-Day prior written notice of when any such revision is scheduled to be released. City shall have a 15-Day evaluation window to review release documentation regarding software modules being impacted and general revision changes. The foregoing requirements shall not apply to routine maintenance, patches, and other changes that do not impact functionality.

e. Testing: After the evaluation period, Contractor shall conduct a deployment of the revision to the City test environment. The Software deployment will be scheduled in writing five Days prior to actual deployment activities. As part of the upgrade activities within the Test Environment, Contractor may provide nominal testing to ensure all systems are functional and the revision deployment was successful. Post-deployment activities include an e-mail or portal post to serve as written notification that this service has been completed. City shall have a 45-Day test window in which City has ability to test and raise issues with Contractor. Test environment deployment activities will be conducted during a mutually agreed-to time window and may not necessarily align with the production maintenance windows as described within this document.

f. Severity 1 and Severity 2 Incident Correction: If a SaaS Severity Level 1 or Severity Level 2 Issue is identified and appropriately triaged and classified by both Contractor and City during the test environment deployment test window, Contractor shall correct the SaaS Issue. The severity of a SaaS Issue will be initially defined by the City and confirmed by Contractor. Until the SaaS Issue has been resolved, the Severity Level may be raised or lowered based on Contractor's analysis of impact to business. If the SaaS Issue can be corrected and can be redeployed within the remainder of the deployment test window, City will have an additional five testing Days in which to evaluate and further test for the SaaS Issue resolution. If the SaaS Issue cannot be corrected within the remainder of the test window, Contractor will deploy immediately upon availability with as much notice as practicable. City will be allowed an additional five testing Days to evaluate the correction post the test window if desired.

g. Testing Suspension: If at any time during the testing window City identifies the presence of multiple SaaS Severity Level 1 or Severity Level 2 Issues that can be shown to materially impact City's ability to continue testing, City may in writing elect to suspend testing until corrections for the SaaS Issues can be provided. Contractor will deploy corrections immediately upon availability with as much notice as practicable. Upon release of corrections,

City will have five Days to commence the testing within the then available remaining testing window.

h. Software Promotion: Contractor will promote revision from Test Environment to Production and Back-up Environments after the provided test window has elapsed. The Software promotion will be scheduled in writing five Days prior to actual deployment activities. As part of the promotion activities within the Production and Back-up Environment, Contractor may provide nominal testing to ensure all systems are functional and the revision promotion was successful. Post-promotion activities include an e-mail or portal post to serve as written notification that this service has been completed. At the point of e-mail or portal posting, the new revision will be considered “in production” and supported under the maintenance service terms described here within.

i. Documentation: In support of such SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software patches, Contractor shall provide updated user technical documentation reflecting the SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software patches as soon as reasonably practical after the SaaS Software Version upgrades, SaaS Software Revisions and SaaS Software Patches have been released. Updated user technical documentation that corrects SaaS Software Errors or other minor discrepancies will be provided to Contractor’s customers when available.

j. Training: Contractor must provide standard training using Contractor’s upgrade tools and provide ongoing knowledge transfer to the City.

C. Response to SaaS Issues. Contractor shall provide verbal or written responses to SaaS Issues identified by City in an expeditious manner. Such responses shall be provided in accordance with the Target Response Times provided in Appendix C.

D. SaaS Software Maintenance Acceptance Period. Unless otherwise agreed to by City on a case-by-case basis, for non-emergency maintenance, City shall have a 20-business-day period to test any maintenance changes prior to Contractor introducing such maintenance changes into production. If the City rejects, for good cause, any maintenance changes during the SaaS Software Maintenance Acceptance Period, Contractor shall not introduce such rejected maintenance changes into production. At the end of the Maintenance Acceptance Period, if City has not rejected the maintenance changes, the maintenance changes shall be deemed to be accepted by City and Contractor shall be entitled to introduce the maintenance changes into production.

E. SaaS Hardware. Contractor shall use commercially reasonable efforts to ensure that all hardware (including servers, routers, and other related equipment) on which the SaaS Application is deployed are attached to back-up power systems sufficient to maintain the site’s availability for so long as any power outage could reasonably be expected to occur, based on the

experience of Contractor at its deployment location and consistent with the Tier rating of the Data Center required under Section II.I of this Appendix.

IV. City Responsibilities

A. Support Contacts: The City will appoint up to five Authorized Users to engage Contractor's Support Team (Support Contacts). Support Contacts will have the ability to approve:

1. System updates to the SaaS Application
2. Changes suggested by Support to resolve a defect
3. Changes to City's list of Support Contacts

B. The City shall provide Contractor with timely notification of any SaaS Issues or SaaS Software Errors by either of these methods:

1. Ticket: As the primary method of contact, Authorized Users may submit a ticket any time using the Contractor's online ticketing system hosted on Contractor's service desk web portal, Intelix Community, (or future successor). Authorized Users will obtain access to the system as part of a transition to Support at the completion of the implementation project.

2. Phone: If Contractor's online ticketing system is unavailable, Authorized Users may call Contractor's Support Team using the contact information at: <https://www.intelix.com/contact-us>

3. Authorized reseller: If applicable, the SFMTA may contact an Intelix reseller in accordance with its agreement with the reseller.

C. Support for Problem Investigation. The City shall support all reasonable requests by Contractor as may be required in problem investigation and resolution.

D. Designation of Point of Contact. The Authorized User(s) appointed by the City as Support Contact(s) shall also serve as the designated contact(s) for all communication with Contractor during SaaS Issue investigation and resolution.

E. Discovery of SaaS Software Errors. Upon discovery of a SaaS Software Error, City agrees, if requested by Contractor, to submit to Contractor a listing of output and any other data that Contractor may require in order to reproduce the SaaS Software Error and the operating conditions under which the SaaS Software Error occurred or was discovered.

V. As-Needed Software Configuration

Depending on the needs of the SFMTA, in accordance with Section 4.5 of the Agreement, the SFMTA may request As-Needed Software Configuration and Training Services from Contractor. As-Needed Software Configuration that may be requested includes, but is not limited to,

standard or custom configuration of the Intelex application purchased by SFMTA and typically performed by solutions architects and/or consultants. Examples include, but are not limited to, building and configuring application objects, form fields, action handlers, business rules, views, view actions, workflows, and high-level source code editing through the application front-end tools. As-Need Software Configuration Services requested by SFMTA shall be formally documented in a Statement of Work.

Appendix B
Calculation of Charges

1. Perpetual Licenses transitioned to Base SaaS Annual Subscription

Product	Quantity
Audit with Checklists	1
EHS Incident Management	1
Nonconformance Management	1
Operational Risk Management	1
Training Management	1
Fragment Application Objects	1
Full Access Users	65
Standard Access Users	40
Supervisor Access Users	40
System Administrator User	5
Data Import Tool	1
Intelex OpenPass API	1

2. Base SaaS Annual Subscription Fees

Term	Annual Increase	Annual Subscription Fee
Year 1 - July 01, 2023 – June 30, 2024	2.5%	\$186,286.56
Year 2 - July 01, 2024 – June 30, 2025	5%	\$195,600.89
Year 3 - July 01, 2025 – June 30, 2026	5%	\$205,380.93
Year 4 - July 01, 2026 – June 30, 2027	5%	\$215,649.98
Year 5 - July 01, 2027 – June 30, 2028	5%	\$226,432.48
Year 6 (Option Year 1) – July 01, 2028 – June 30, 2029	5%	\$237,754.10
Year 7 (Option Year 2) - July 01, 2029 – June 30, 2030	5%	\$249,641.81
Year 8 (Option Year 3) - July 01, 2030 – June 30, 2031	5%	\$262,123.90
Year 9 (Option Year 4) – July 01, 2031 – June 30, 2032	5%	\$275,230.10
Total Not-to-Exceed Amount (with Options)		\$2,054,100.75

3. Optional Additional Product Annual Subscription Fees

Contractor shall prorate the Additional Product Subscription fees to adjust for a partial year of the subscription. Thereafter, renewal of Additional Product Subscription fees shall be payable yearly in advance. Contractor shall invoice Additional Product Subscriptions fees as a separate invoice line item not to be combined with Base SaaS Total Annual Subscription Fees.

Year 1 - July 01, 2023 – June 30, 2024

Additional Product	Additional Annual Subscription Fee per Product
System Administrator User	\$1,015.00
Full Access User	\$870.00
Supervisor Access User	\$870.00
Standard Access User	\$435.00
Low Complexity Application*	\$15,000.00
1 GB of additional storage (in excess of the Default Storage Capacity)	\$50.00

* For the purposes of this Agreement, “Low Complexity Application” means a customized application that closely aligns with the out-of-the-box functionality of the Intalex template application.

**The Additional Annual Subscription Fee for High Complexity Applications is based on the complexity of the Application and will be offered at the then current Additional Annual Subscription Fee.

Year 2 - July 01, 2024 – June 30, 2025

Additional Product	Additional Annual Subscription Fee per Product
System Administrator User	\$1,040.38
Full Access User	\$891.75
Supervisor Access User	\$891.75
Standard Access User	\$445.88
Low Complexity Application**	\$15,375.00
1 GB of additional storage (in excess of the Default Storage Capacity)	\$51.25

**The Additional Annual Subscription Fee for High Complexity Applications is based on the complexity of the Application and will be offered at the then current Additional Annual Subscription Fee.

Year 3 - July 01, 2025 – June 30, 2026

Additional Product	Additional Annual Subscription Fee per Product
System Administrator User	\$1,092.39
Full Access User	\$936.34
Supervisor Access User	\$936.34
Standard Access User	\$468.17
Low Complexity Application**	\$16,143.75
1 GB of additional storage (in excess of the Default Storage Capacity)	\$53.81

**The Additional Annual Subscription Fee for High Complexity Applications is based on the complexity of the Application and will be offered at the then current Additional Annual Subscription Fee.

Year 4 - July 01, 2026 – June 30, 2027

Additional Product	Additional Annual Subscription Fee per Product
System Administrator User	\$1,147.01
Full Access User	\$983.15
Supervisor Access User	\$983.15
Standard Access User	\$491.58
Low Complexity Application**	\$16,950.94
1 GB of additional storage (in excess of the Default Storage Capacity)	\$56.50

**The Additional Annual Subscription Fee for High Complexity Applications is based on the complexity of the Application and will be offered at the then current Additional Annual Subscription Fee.

Year 5 - July 01, 2027 – June 30, 2028

Additional Product	Additional Annual Subscription Fee per Product
System Administrator User	\$1,204.36
Full Access User	\$1,032.31
Supervisor Access User	\$1,032.31
Standard Access User	\$516.16
Low Complexity Application**	\$17,798.48
1 GB of additional storage (in excess of the Default Storage Capacity)	\$59.33

**The Additional Annual Subscription Fee for High Complexity Applications is based on the complexity of the Application and will be offered at the then current Additional Annual Subscription Fee.

Year 6 (Option Year 1) – July 01, 2028 – June 30, 2029

Additional Product	Additional Annual Subscription Fee per Product
System Administrator User	\$1,264.58
Full Access User	\$1,083.93
Supervisor Access User	\$1,083.93
Standard Access User	\$541.97
Low Complexity Application**	\$18,688.40
1 GB of additional storage (in excess of the Default Storage Capacity)	\$62.30

**The Additional Annual Subscription Fee for High Complexity Applications is based on the complexity of the Application and will be offered at the then current Additional Annual Subscription Fee.

Year 7 (Option Year 2) - July 01, 2029 – June 30, 2030

Additional Product	Additional Annual Subscription Fee per Product
System Administrator User	\$1,327.81
Full Access User	\$1,138.12
Supervisor Access User	\$1,138.12
Standard Access User	\$569.07
Low Complexity Application**	\$19,622.82
1 GB of additional storage (in excess of the Default Storage Capacity)	\$65.41

**The Additional Annual Subscription Fee for High Complexity Applications is based on the complexity of the Application and will be offered at the then current Additional Annual Subscription Fee.

Year 8 (Option Year 3) - July 01, 2030 – June 30, 2031

Additional Product	Additional Annual Subscription Fee per Product
System Administrator User	\$1,394.20
Full Access User	\$1,195.03
Supervisor Access User	\$1,195.03
Standard Access User	\$597.52
Low Complexity Application**	\$20,603.97
1 GB of additional storage (in excess of the Default Storage Capacity)	\$68.68

**The Additional Annual Subscription Fee for High Complexity Applications is based on the complexity of the Application and will be offered at the then current Additional Annual Subscription Fee.

Year 9 (Option Year 4) – July 01, 2031 – June 30, 2032

Additional Product	Additional Annual Subscription Fee per Product
System Administrator User	\$1,463.91
Full Access User	\$1,254.78
Supervisor Access User	\$1,254.78
Standard Access User	\$627.40
Low Complexity Application**	\$21,634.16
1 GB of additional storage (in excess of the Default Storage Capacity)	\$72.12

**The Additional Annual Subscription Fee for High Complexity Applications is based on the complexity of the Application and will be offered at the then current Additional Annual Subscription Fee.

4. Fully Burdened Hourly Labor Rates for As-Needed Software Configuration and Training Services

Year 1 - July 01, 2023 – June 30, 2024

Resource	Hourly Rate (USD)
Project Manager	\$225
Solution Architect	\$260
Environmental Consultant	\$220
Consultant	\$220
Technical Consultant	\$220
QA Analyst	\$185
Trainer	\$230

Year 2 - July 01, 2024 – June 30, 2025

Resource	Hourly Rate (USD)
Project Manager	\$248
Solution Architect	\$286
Environmental Consultant	\$242
Consultant	\$242
Technical Consultant	\$242
QA Analyst	\$204
Trainer	\$253

Year 3 - July 01, 2025 – June 30, 2026

Resource	Hourly Rate (USD)
Project Manager	\$272
Solution Architect	\$315
Environmental Consultant	\$266
Consultant	\$266
Technical Consultant	\$266
QA Analyst	\$224
Trainer	\$278

Year 4 - July 01, 2026 – June 30, 2027

Resource	Hourly Rate (USD)
Project Manager	\$299
Solution Architect	\$346
Environmental Consultant	\$293
Consultant	\$293
Technical Consultant	\$293
QA Analyst	\$246
Trainer	\$306

Year 5 - July 01, 2027 – June 30, 2028

Resource	Hourly Rate (USD)
Project Manager	\$329
Solution Architect	\$381
Environmental Consultant	\$322
Consultant	\$322
Technical Consultant	\$322
QA Analyst	\$271
Trainer	\$337

Year 6 (Option Year 1) – July 01, 2028 – June 30, 2029

Resource	Hourly Rate (USD)
Project Manager	\$362
Solution Architect	\$419
Environmental Consultant	\$354
Consultant	\$354
Technical Consultant	\$354
QA Analyst	\$298
Trainer	\$370

Year 7 (Option Year 2) – July 01, 2029 – June 30, 2030

Resource	Hourly Rate (USD)
Project Manager	\$399
Solution Architect	\$461
Environmental Consultant	\$390
Consultant	\$390
Technical Consultant	\$390
QA Analyst	\$328
Trainer	\$407

Year 8 (Option Year 3) - July 01, 2030 – June 30, 2031

Resource	Hourly Rate (USD)
Project Manager	\$438
Solution Architect	\$507
Environmental Consultant	\$429
Consultant	\$429
Technical Consultant	\$429
QA Analyst	\$361
Trainer	\$448

Year 9 (Option Year 4) – July 01, 2031 – June 30, 2032

Resource	Hourly Rate (USD)
Project Manager	\$482
Solution Architect	\$557
Environmental Consultant	\$472
Consultant	\$472
Technical Consultant	\$472
QA Analyst	\$397
Trainer	\$493

Appendix C

Service Level Obligations

The terms and conditions of this Service Level Agreement apply to the CITY AND COUNTY OF SAN FRANCISCO's ("Customer") use of Intelex's Software-as-a-Service-based subscription services ("SaaS"), professional and support services, along with any related work product (such as SaaS, professional and support services and work product, collectively, the "Intelex Platform") ordered by Customer under an order form, statement of work, or other ordering document issued by Intelex (including any online form, which Customer agrees is subject to acceptance or rejection by Intelex) specifying the services to be provided hereunder (each an "Order" and collectively, the "Orders"). The terms contained in this Intelex Schedule shall apply to the Intelex Platform only and are in addition to all other terms stated within the main body of the Agreement. All usage restrictions, IP terms and other terms applicable stated in the main body of the Agreement above shall apply to the Intelex Platform.

1. DEFINITIONS

- 1.1. "Default Storage Capacity" means the maximum allowable aggregate size of the Customer Data that may be stored on the Intelex Platform, which is 50 gigabytes, and the maximum allowable aggregate size of the Customer Data that may be stored in the ACTS Service production and non-production environment, which is 100 gigabytes. Additional storage capacity may be purchased as provided under an applicable Order Form.
- 1.2. "Documentation" means as related to the SaaS, the documentation on SaaS technical specifications made available to Customer via an Intelex online portal.
- 1.3. "Business Day" means any weekday of the year (Monday through Friday) except for the following: New Year's Day (January 1), and Christmas Day (December 25).
- 1.4. "Hosting Partner" means a third-party provider of hosting services that operates a certified hosting center equivalent to SSAE16 Type II SOC2 certification.

2. GENERAL

- 2.1. Intelex will provide the Intelex Platform and related support services in accordance with the service level terms stated in Section 6 and 7 below.
- 2.2. Intelex shall regularly test its security safeguards, including through the use of penetration or vulnerability testing, and Intelex shall make reports available to Customer upon request. If Intelex does not make such report available to Customer upon request, then Intelex will allow Customer to conduct its own penetration test, provided that (a) the timing of such testing is mutually agreed upon, (b) testing is on the most recent version of the Intelex Platform and (c) Intelex is solely responsible for the manner in which vulnerabilities are remedied.
- 2.3. Restrictions: In addition to all restrictions stated in the main body of the Agreement which apply to the use of the Intelex Platform, the Parties agree that if either Party discovers that Customer has exceeded the applicable number and type of Authorized Users in the applicable Order, or that the aggregate size of the Customer Data has exceeded the Default Storage Capacity, such Party will immediately notify the other Party, and Customer will pay Intelex its then-current standard listed fees for such overage up to that point. Thereafter, Intelex may either (a) require Customer to either bring its usage within the limits of such restrictions or (b) increase Customer's permitted number of Authorized Users, or Default Storage Capacity (subject to continued payment of such fees for such overage).

3. CONTENT

- 3.1. The primary use for the Intelex Platform is to provide a medium to host and process Customer Data. However, as a supplemental portion of the Intelex Platform, Intelex may make Content available to Customer within the

Intelex Platform. "Content" means data, templates, informational content, factors, compliance standards, images or materials that is produced by Intelex or licensed to Intelex by third parties, excluding Customer Data.

- 3.2. Intelex shall make good faith efforts, consistent with industry standards, to ensure such Content is accurate and complete however Intelex provides the Content on an "As-Is" basis and makes no representations, guarantees or warranties (express, implied or otherwise) of any kind concerning the Content, including, without limitation, no warranties of satisfactory quality, availability, timeliness, fitness for a particular purpose, accuracy, completeness, merchantability, up-to-datedness, title or against infringement of the proprietary or other rights of third parties. Customer shall use such Content at its own risk. Intelex reserves its right to change, update or discontinue in any way part or all of the Content without notice.
- 3.3. Customer may be required to complete additional forms or documents in order to use the Content, provided that Intelex shall notify Customer prior to of such requirement. Customer shall ensure its Authorized Users use the Content in accordance with the terms applicable to Services under this Agreement.

4. GENERAL SERVICE LEVEL TERMS

SCOPE

4.1. "Support" consists of Intelex assisting Customer's Authorized Users in the following ways:

- 4.1.1. Resolve defects relating to the SaaS. A defect is any error, problem, or malfunction of the SaaS such that it does not conform to the Documentation ("Defect").
- 4.1.2. Provide online resources via the online customer portal.
- 4.1.3. Notify customers of, and provide access to, patches, Software Updates and Documentation released by Intelex.

4.2. Support does not include:

- 4.2.1. Implementation services
- 4.2.2. Configuration services
- 4.2.3. Customization services
- 4.2.4. Integration services
- 4.2.5. Training and / or walkthroughs of the system
- 4.2.6. Assistance with administrative tasks and functions
- 4.2.7. Defects related to third-party components, including Customer's infrastructure and network

Support is not required to provide resolutions for Defects due to non-standard modifications of the SaaS made by any person other than Intelex or a person acting on Intelex's direction.

BUSINESS HOURS

- 4.3. InteleX shall provide Support every business day from the hours of 4:00 a.m. ET to 8 p.m. ET.
- 4.4. Severity 1 defects can be reported 24 hours a day, 7 days a week, 365 days a year by submitting a Severity 1 ticket or calling the after-hours support number detailed in Section 6.7.

SUPPORT CONTACTS

- 4.5. Customer can appoint up to five (5) Authorized Users to engage InteleX' Support Team ("Support Contacts"). Support Contacts will have the ability to approve:
 - 4.5.1. System updates to the SaaS
 - 4.5.2. Changes suggested by Support to resolve a defect
 - 4.5.3. Changes to Customer's list of Support Contacts

CUSTOMER RESPONSIBILITIES

- 4.6. Customer's obligations to the Support Team are as follows:
 - 4.6.1. Customer agrees to receive from InteleX (or an authorized reseller), notifications via email, phone, or through the online ticketing system as they relate to the Support process.
 - 4.6.2. Only Customer Support Contacts are authorized to contact Support.
 - 4.6.3. Customer shall ensure Support Contacts are familiar and knowledgeable on the use and administration of the SaaS.
 - 4.6.4. Customer agrees to provide InteleX with all information and materials reasonably requested by InteleX, including reasonable access to the SaaS to enable replicating, diagnosing, and correcting a Defect reported by Customer. Customer acknowledges that InteleX's ability to provide satisfactory support services is dependent on InteleX having the information necessary to replicate the reported problem with the SaaS.
 - 4.6.5. Support will be provided remotely and if InteleX is required to attend a Customer's premises the costs shall be agreed in a Statement of Work.

CONTACT INFORMATION

- 4.7. Customer may contact InteleX using one of the following methods:
 - 4.7.1. Ticket: As the primary method of contact, Customer may submit a ticket any time using the InteleX online ticketing system hosted on InteleX Community (or future successor). Customer's Support Contacts will

obtain access to the system as part of a transition to Support at the completion of the implementation project.

4.7.2. Phone: If the Intelex online ticketing system is unavailable, Customer may call Intelex' Support Team using the contact information at: <https://www.intelex.com/contact-us>

4.7.3. After-hours: For Severity 1 issues only, Customer may submit a Severity 1 support ticket outside of business hours. If the Intelex online ticketing system is unavailable, Customer may call (416) 847 8985. This line is open on a 24-hour, 7-day per week basis for Severity 1 issues only.

4.7.4. Authorized reseller: If applicable, Customer may contact an Intelex reseller in accordance with its agreement with the reseller.

SERVICE LEVELS

4.8. Intelex will provide the support services stated in the table below for the SaaS.

4.8.1. "Notification" means a submitted support ticket by Customer or a support call made by Customer to Intelex.

4.8.2. "Response" means acknowledgment of the Notification and assignment of a Support analyst to investigate the defect.

4.8.3. "Resolution" means the Defect has been resolved and Intelex has notified Customer of such resolution. Time spent waiting for information or confirmation from Customer is not counted in the Resolution time measurement.

Response times are based on the Severity of the issue as defined below. Intelex will provide response and resolution according to the timeline targets below.

Severity	Definition	Response Target
Level 1	SaaS is entirely inoperable as follows: (i) No users can log on to the web application. (ii) No users can log on to the mobile application. (iii) No records can be submitted system wide.	30 minutes from time of notification (24x7x365) and four (4) hour Resolution target.
Level 2	Customer can use the SaaS, but one or more areas of function are inoperable, including: (i) Inability to run reports. (ii) Failure to submit records or modify any existing records within an application. (iii) Failure to send any notifications. (iv) Failure to execute any scheduled events or services. (v) Multiple users are unable to access the SaaS.	One (1) business day from time of notification
Level 3	A defect in the SaaS affecting an area of function, including: (i) A subset of reports is not running. (ii) Cannot create or modify a subset of application records. (iii) A subset of emails is not generated or sent. (v) Failure of a subset of scheduled events or services	Three (3) business days from time of notification.
Level 4	A support inquiry not related to a defect, including: (i) Intelex process questions. (ii) Administration of Authorized User list. (iii) Patch requests.	Five (5) business days from time of notification.

The table above does not apply to the Intelex Asset & Compliance Tracking System ("ACTS") service that may be purchased by Customer. The applicable ACTS Service Levels are provided under Section 7 of this Schedule.

SYSTEM AVAILABILITY

4.9. The SaaS shall be available 99.9% of the time, as calculated monthly on a 24-hour / 7-day basis, excluding Exempt Downtime. "Exempt Downtime" is a period where the SaaS is unavailable due to:

4.9.1. Scheduled maintenance necessary to implement any updates, upgrades, or other modifications to the SaaS or perform routine maintenance activity. Intelex will provide Customer with advanced notice two (2) weeks prior to the scheduled date.

4.9.2. Unplanned maintenance necessary to react to an emergency or unforeseen problem. Intelex will provide Customer with as much advanced notice as possible. Where possible, Intelex will schedule the maintenance in a period of low activity in the region.

4.9.3. Failure of equipment or services not provided by Intelex such as Customer's infrastructure, network, facilities, or public communications facilities accessed by Customer to connect to the SaaS.

4.9.4. Downtime that occurs because of modifications to the SaaS made by any person other than Intelex or a person acting on Intelex's direction.

If Intelex fails to meet the availability commitment of 99.9%, Customer, as its sole and exclusive remedy to the failure, is entitled to a credit as follows. Service credits will be applied to the next invoice for the Subscription Fee for that Subscription Term or if there will be no additional invoices due to expiration or termination of the Agreement, then Intelex shall pay the Service Credit to Customer in the form of an electronic fund transfer.

Actual Availability Percentage	Service Credit
>= 99.9%	No Credit
99% to 99.89%	3% of monthly Subscription Fee
98% to 98.99%	6% of monthly Subscription Fee
97% to 97.99%	10% of monthly Subscription Fee
< 97%	20% of monthly Subscription Fee

SUPPORTED SOFTWARE VERSIONS

4.10. Intelex will make available new patch versions ("Software Updates") of the SaaS containing Defect fixes, feature updates, enhancements, and infrastructure improvements. Customer shall notify Intelex when it wants to install the latest Software Update then the Parties will arrange the date and time of the install. Intelex will Support the SaaS on the latest released Software Update and previous twelve (12) Software Updates. Customers may continue to use non-supported versions of the SaaS but may be requested to update to the latest Software Update as a primary step in the investigation of a Defect on a non-supported version. Notwithstanding the foregoing, Intelex may notify Customer that an Update is necessary in order to resolve an identified Defect.

4.11. Intelex will make available new versions of standard applications within the SaaS ("Application Updates") containing feature updates and enhancements. Application Updates that contain minor enhancements to applications which have not been configured to customer-specific requirements shall be provided at no cost. Application Updates may require additional cost to the Customer if Professional Services are required to implement the Application Update or if the Application Update includes a significantly different feature or functionality. Customer will be notified if any additional fees apply to an Application Update prior to install.

Intelex may release new platform versions of the SaaS ("Platform Updates") containing major changes to the structure and functionality of the SaaS. Upgrades to a new Platform Update may come at an additional cost to the Customer. Customer will be notified if any additional fees apply to for a Platform Update prior to install.

Appendix D Disaster Recovery Plan

Contractor shall maintain a high availability configuration in the primary data center, with a mirrored instance of the SFMTA production system and supporting infrastructure in the secondary data center. Contractor shall maintain a standard procedure that governs the management of business continuity events. A disaster recovery test plan must be reviewed and exercised at least annually. Upon reasonable notice from the SFMTA, disaster recovery testing documentation shall be made available to the SFMTA. Contractor will provide the SFMTA's Chief Technology Officer with access to review business continuity and disaster recovery plan.

Contractor shall provide the SFMTA with a business continuity strategy and disaster recovery plan and procedures that can be implemented in the event of a catastrophic failure at the primary hosting site. Such a strategy should provide how quickly the secondary site will be available to Authorized Users. The business continuity strategy must include drills and exercises to test the readiness to execute the disaster recovery plan. If requested, the first drill must happen within six months of contract signing and then once per year thereafter. The drill plans, action items and project plan for follow-ups must be shared with the SFMTA.