

THIS PRINT COVERS CALENDAR ITEM NO.: 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Transit

BRIEF DESCRIPTION:

Awarding Contract No. SFMTA-2018-33, Software Agreement, to Remix Software, Inc. to renew software license for the Remix Transit Planning Platform, and related information technology and customer support services for an amount not to exceed \$974,600 and a term of three years, with four one-year options to renew.

SUMMARY:

- The San Francisco Municipal Transportation Agency (SFMTA) uses the Remix Transit Planning Platform, a web-based transit planning software, to quickly and effectively model and analyze route and schedule changes to Muni's bus and metro services.
- Transportation planners use the Remix Transit Planning Platform to model possible financial impacts of these route and schedule changes, and measure how these changes may affect the access different population groups may have to Muni, which helps the SFMTA make equitable service-planning decisions.
- By awarding Contract No. SFMTA-2018-33 (Contract) to Remix Software, Inc., transportation planners at the SFMTA will be able to continue to utilize the Remix Transit Planning Platform to advance the agency's mission to connect San Francisco through a safe, equitable, and sustainable transportation system.
- The Contract is for software and enterprise services, which include information technology and customer support services.

ENCLOSURES:

1. SFMTAB Resolution
2. Contract

APPROVALS:

DIRECTOR Tom Maguire

SECRETARY R. Boomer

DATE

August 13, 2019

August 13, 2019

ASSIGNED SFMTAB CALENDAR DATE: August 20, 2019

PURPOSE

Award Contract No. SFMTA-2018-33, Software Agreement, to Remix Software, Inc. to renew software license for the Remix Transit Planning Platform, and related information technology and customer support services for an amount not to exceed \$974,600 and a term of three years, with four one-year options to renew.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This action supports the following SFMTA Strategic Plan Goals and Objectives:

Goal 2: Make transit and other sustainable modes of transportation the most attractive and preferred means of travel.

Objective 2.1: Improve transit service.

Goal 3: Improve the quality of life and environment in San Francisco and the region.

Objective 3.1: Use Agency programs and policies to advance San Francisco's commitment to equity.

Objective 3.5: Achieve financial stability for the agency.

This action supports the following SFMTA Transit First Policy Principles:

Principle 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.

Principle 2: Public transit, including taxis and vanpools, is an economically and environmentally sound alternative to transportation by individual automobiles. Within San Francisco, travel by public transit, by bicycle and on foot must be an attractive alternative to travel by private automobile.

Principle 8: New transportation investment should be allocated to meet the demand for public transit generated by new public and private commercial and residential developments.

Principle 9: The ability of the City and County to reduce traffic congestion depends on the adequacy of regional public transportation. The City and County shall promote the use of regional mass transit and the continued development of an integrated, reliable, regional public transportation system.

DESCRIPTION

In 2017, the SFMTA procured the Remix Transit Planning Platform under a competitive solicitation, as required by San Francisco Administrative Code Chapter 21.1. The initial purchase order for \$143,705 covered software licenses, training, and enterprise services for one year, and has since been extended. The Remix Transit Planning Platform is a web-based software that allows transit planners to analyze the impacts of service changes in public transportation networks.

The Remix Transit Planning Platform consists of a simple interface whereby transit planners can manipulate Muni routes, add or remove stops, and change schedules. This software provides SFMTA staff with an essential tool to carry out core job functions of planning new transit service routes and designing interim transit service during special events and construction projects. This tool has informed and expedited the transit-service planning process and enabled planners to do their jobs more effectively. It has also provided planners with communication tools to visualize routing and scheduling changes in a manner easily accessible to anyone, thus enabling better community engagement.

The SFMTA proposes to enter into a new agreement with Remix Software, Inc. as a sole-source software licensing procurement, as authorized under San Francisco Administrative Code Chapter 21.30. This will enable the SFMTA to utilize the software's full transit-planning platform, including fast and accurate sketch planning using existing stop infrastructure, instant demographic impact analysis, instant cost estimates, public engagement and share features, and other features.

Remix Software, Inc. was founded in 2014 and is based in San Francisco. There is no Local Business Entity (LBE) subcontracting participation requirement for this Agreement.

The City Attorney has reviewed this report.

STAKEHOLDER ENGAGEMENT

Public outreach was not done because the Contract is for transit-planning software which will be used by SFMTA staff, and which is not anticipated to have significant or adverse impacts to the public.

ALTERNATIVES CONSIDERED

The Remix Transit Planning Platform is currently the best tool to provide an agile way to visually sketch transit scenarios, design new routes, modify existing ones, estimate costs, and allow for rapid evaluation and comparison. It provides the unique capability of combining several of the functions of traditional or highly advanced software applications and tools typically used in the service planning process (hand-drawn maps, Google Maps, Excel, ArcGIS, Trapeze/HASTUS, etc.) into a single web-based tool.

PAGE 4

The SFMTA Board of Directors could choose not to renew the Contract, but this would mean that planners would not have access to Remix's unique set of tools. Additionally, switching vendors would also require new software to be configured to the SFMTA's needs and staff to be trained on the new platform.

FUNDING IMPACT

Funding for this Contract in the amount of \$974,600 is included in the operating budget for the SFMTA Transit Division. The annual services fee for the Remix Transit Planning Platform and enterprise services is \$138,200 for the Contract's initial term of three years, and \$140,000 for each of the four one-year options. The services fee will be invoiced annually.

ENVIRONMENTAL REVIEW

On July 25, 2019, the SFMTA, under authority delegated by the Planning Department, determined that the Contract is not defined as 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

Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 40677 on May 20, 2019.

RECOMMENDATION

Staff recommends the Board award Contract No. SFMTA-2018-33, Software Agreement, to Remix Software, Inc. to renew software license for the Remix Transit Planning Platform, and related information technology and customer support services for an amount not to exceed \$974,600 and a term of three years, with four one-year options to renew.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The SFMTA needs to efficiently analyze transit-planning decisions; and,

WHEREAS, Financial and equity considerations are key to achieve the SFMTA's Strategic Plan Goals and Transit First Policy; and,

WHEREAS, The Remix Transit Planning Platform provides the tools for planners to achieve the aforementioned goals; and,

WHEREAS, The SFMTA initially procured the Remix Transit Planning Platform under competitive solicitation, as required by San Francisco Administrative Code Chapter 21.1; and,

WHEREAS, The SFMTA wishes to renew the Remix Transit Planning Platform software license and related information technology and customer support services; and,

WHEREAS, This Contract is being entered into with Remix Software, Inc. and shall be treated as a sole software licensing procurement authorized under San Francisco Administrative Code Chapter 21.30; and,

WHEREAS, There is no Local Business Entity (LBE) subcontracting participation requirement for this Agreement; and,

WHEREAS, Remix Software, Inc., represents and warrants that it is qualified to provide the services required by City as set forth under this Contract; and,

WHEREAS, Approval for this Contract was obtained when the Civil Service Commission approved Contract number 40677 on May 20, 2019; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to award Contract No. SFMTA-2018-33, Software Agreement, to Remix Software, Inc. to renew software license for the Remix Transit Planning Platform, and related information technology and customer support services for an amount not to exceed \$974,600 and a term of three years, with four one-year options to renew.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of August 20, 2019.

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**

REMIX SOFTWARE, INC.

Contract No. SFMTA-2018-33

TABLE OF CONTENTS

	<u>Page</u>
Article 1	Definitions 1
Article 2	Term of the Agreement..... 6
2.1	Term..... 6
2.2	Options to Renew 6
Article 3	Financial Matters 6
3.1	Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation 6
3.2	Guaranteed Maximum Costs 6
3.3	Compensation 6
3.3.1	Payment..... 6
3.3.2	Amount not to Exceed 7
3.3.3	Payment Limited to Satisfactory Services 7
3.3.4	Withhold Payments..... 7
3.3.5	Invoice Format 7
3.3.6	Reserved. (LBE Payment and Utilization Tracking System) 7
3.3.7	Getting Paid for Goods and/or Services from the City 7
3.4	Audit and Inspection of Records 8
3.5	Submitting False Claims..... 8
Article 4	SaaS Services and Resources 8
4.1	SaaS Licensed Software 8
4.1.1	Click-Wrap Disclaimer 8
4.1.2	SaaS Application Title 9
4.1.3	Authorized APIs..... 9
4.1.4	Proprietary Markings 9
4.2	Project Managers; Services Contractor Agrees to Perform..... 9
4.2.1	Project Managers 9
4.2.2	Services Contractor Agrees to Perform 10
4.3	Acceptance Testing; Document Delivery; Training 10
4.4	Qualified Personnel 11
4.5	Subcontracting 11
4.6	Independent Contractor; Payment of Employment Taxes and Other Expenses..... 11
4.6.1	Independent Contractor..... 11
4.6.2	Payment of Employment Taxes and Other Expenses 12
4.7	Assignment 12
4.8	Warranty 12
Article 5	Insurance; Indemnity and Warranties..... 12
5.1	Insurance..... 12

5.2	Indemnification.....	14
5.2.1	General Indemnification	14
5.2.2	Infringement Indemnification	15
5.3	Warranties of Contractor	16
5.3.1	Warranty of Authority; No Conflict	16
5.3.2	Warranty of Performance.....	16
5.3.3	Compliance with Description of Services.....	16
5.3.4	Title	16
5.3.5	Disabling Code.....	16
Article 6	Liability of the Parties	16
6.1	Liability of City	16
6.2	Liability for Use of Equipment.....	17
Article 7	Payment of Taxes	17
Article 8	Termination; Disposition of Content; Survival	18
Article 9	Rights In Deliverables	21
9.1	Ownership of Results.....	21
9.2	Works for Hire.....	21
Article 10	Additional Requirements Incorporated by Reference	22
10.1	Laws Incorporated by Reference	22
10.2	Conflict of Interest.....	22
10.3	Prohibition on Use of Public Funds for Political Activity	22
10.4	Reserved	22
10.5	Nondiscrimination Requirements	22
10.5.1	Non Discrimination in Contracts	22
10.5.2	Nondiscrimination in the Provision of Employee Benefits	23
10.6	Local Business Enterprise and Non-Discrimination in Contracting Ordinance.....	23
10.7	Minimum Compensation Ordinance	23
10.8	Health Care Accountability Ordinance.....	23
10.9	First Source Hiring Program.....	23
10.10	Alcohol and Drug-Free Workplace	23
10.11	Limitations on Contributions.....	23
10.12	Reserved. (Slavery Era Disclosure).....	24
10.13	Reserved. (Working with Minors).....	24
10.14	Consideration of Criminal History in Hiring and Employment Decisions	24
10.15	Reserved. (Public Access to Nonprofit Records and Meetings)	24
10.16	Food Service Waste Reduction Requirements	24
10.17	Reserved. (Sugar-Sweetened Beverage Prohibition).....	25
Article 11	General Provisions.....	25
11.1	Notices to the Parties	25
11.2	Compliance with Americans with Disabilities Act	25

11.3	Reserved	25
11.4	Sunshine Ordinance	25
11.5	Modification of this Agreement	26
11.6	Dispute Resolution Procedure	26
11.6.1	Negotiation; Alternative Dispute Resolution.....	26
11.6.2	Government Code Claim Requirement.....	26
11.7	Agreement Made in California; Venue	26
11.8	Construction.....	26
11.9	Entire Agreement.....	26
11.10	Compliance with Laws	27
11.11	Severability	27
11.12	Cooperative Drafting	27
11.14	Order of Precedence	27
Article 12	SFMTA Specific Terms.....	27
12.1	Large Vehicle Driver Safety Training Requirements.....	27
Article 13	Data and Security.....	28
13.1	City Data.....	28
13.1.1	Ownership of City Data	28
13.1.2	Use of City Data.....	28
13.1.3	Access to and Extraction of City Data	28
13.1.4	Back-up and Recovery of City Data	28
13.1.5	Data Breach; Loss of City Data	29
13.2	Proprietary or Confidential Information.....	32
13.2.1	Proprietary or Confidential Information of City.....	32
13.2.2	Contractor Confidential Information	32
13.2.3	Obligation of Confidentiality	32
13.2.4	Nondisclosure	33
13.2.5	Litigation Holds	33
13.2.6	Notification of Legal Requests	33
13.2.7	Cooperation to Prevent Disclosure of Confidential Information.....	34
13.2.7	Remedies for Breach of Obligation of Confidentiality.....	34
13.2.8	Surrender of Confidential Information upon Termination.....	34
13.2.10	Data Security.....	34
13.2.11	Data Privacy and Information Security Program.....	35
13.2.12	City’s Right to Termination for Deficiencies	35
13.2.13	Data Transmission	35
13.3	SSAE 16, SOC 2/SOC 3 and/or SOC 1 Audit Report.....	35
13.4	Reserved. (Payment Card Industry (“PCI”) Requirements).....	36
Article 14	Force Majeure.....	36
14.1	Liability	36

14.2	Duration	36
14.3	Effect	37
14.4	Disaster Recovery.....	37
Article 15	Appendices	37
15.1	Additional Appendices	37
15.2	Appendices	37
Article 16	MacBride And Signature	37
16.1	MacBride Principles -Northern Ireland	38

**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
REMIX SOFTWARE, INC.**

Contract No. SFMTA-2018-33

This Agreement is made as of _____, in the City and County of San Francisco (City), State of California, by and between Remix Software, Inc., 155 9th Street, San Francisco, California 94103 (Contractor) and City, acting through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA competitively procured the Remix Transit Planning Platform under Purchase Order No. DPMT17002811 as required by San Francisco Administrative Code Chapter 21.1.

B. The SFMTA wishes to renew the Remix Transit Planning Platform software licenses and Enterprise support.

C. This Agreement is being entered into with Contractor and shall be treated as a sole source software licensing procurement as per San Francisco Administrative Code Chapter 21.30.

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

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

F. Approval for this Agreement was obtained when the Civil Service Commission approved Contract number PSC 40677-18/19 on May 20, 2019.

Now, therefore, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 “**Agreement**” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements, which are specifically incorporated into this Agreement by reference as provided herein.

1.2 “**Authorized Users**” means persons authorized by City to access the City Portal and use the SaaS Application, including any City employee, contractor, or agent, or any other individual or entity authorized by City.

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

1.4 “**Business Hours**” means 8:00am-6:00pm U.S. Pacific Time.

1.5 “**CCO**” means SFMTA Contract Compliance Office.

1.6 “**City**” or “**the City**” means the City and County of San Francisco, a municipal corporation.

1.7 “**City Confidential Information**” shall have the meaning set forth in Section 13.2.1(a).

1.8 “**City 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, including data resulting from the use of the SaaS Service. City Data includes Confidential Information.

1.9 “**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.

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

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

1.12 “**Confidential Information**” means City Confidential Information and Contractor Confidential Information.

1.13 “**Contractor**” or “**Consultant**” means Remix Software, Inc., 1128 Howard Street, San Francisco, California 94103.

1.14 “**Contractor Confidential Information**” shall have the meaning set forth in Section 13.2.2.

1.15 “**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.

1.16 “**Contractor’s Website**” means the website that provides Authorized Users access to the SaaS Application Services.

1.17 “**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.

1.18 “**Data Center(s)**” means the data center(s) located in the United States that will be used to host the SaaS Application and City Data.

1.19 “**Days**” means calendar days.

1.20 “**Deliverables**” means Contractor's work product resulting from the Services that are provided by Contractor to City during the course of Contractor's performance of the Agreement.

1.21 “**Disabling Code**” means computer instructions or programs, subroutines, code, instructions, data or functions (e.g., viruses, worms, date bombs or time bombs)—including, but not limited to, data storage, computer libraries, 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—which alter, destroy, inhibit, damage, interrupt, interfere with, or hinder the operation of the City's access to the SaaS Services through the 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.

1.22 “**Documentation**” means technical publications provided by Contractor to City relating to use of the SaaS Application, such as reference, administrative, maintenance, and programmer manuals.

1.23 “**Effective Date**” means the date on which the City's Controller certifies the availability of funds for this Agreement, as provided in Section 3.1.

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

1.25 “**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, which impose specific duties and obligations upon Contractor.

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

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

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

1.29 “**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 is linked to an individual, such as medical, educational, financial, and employment information.

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

1.31 “**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 Contractor pre-printed document.

1.32 “**SaaS Application**” means the licensed and hosted computer program residing in Contractor's servers that provides the SaaS Services that may be accessed by Authorized Users through the Internet.

1.33 “**SaaS Issue**” means a problem with the SaaS Services identified by the City that requires a response by Contractor to resolve.

1.34 “**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.

1.35 “**SaaS Services**” means the Services performed by Contractor to host the SaaS Application to provide the functionality listed in the Documentation.

1.36 “**SaaS Severity Level**” means a designation of the effect of a SaaS Issue on the City.

1.37 “**SaaS Software**” means those SaaS licensed programs and associated documentation licensed to City by Contractor as listed in this Agreement and Appendices, and any modification or Upgrades to the program(s) provided under this Agreement.

1.38 “**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.

1.39 “**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.

1.40 “**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.

1.41 “**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: a,b,c,d. An example 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.

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

1.43 “**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.

1.44 “**Services**” means the work performed by Contractor under this Agreement as specifically described in the "SaaS Application & Hosting 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.

1.45 “**Services Fee**” shall have the meaning set forth in Appendix B.

1.46 “**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.

1.47 “**Software**” means the Remix Planning SaaS Software. All Software, revisions and versions provided by Contractor shall be subject to the terms and conditions of this Agreement, including any amendments thereto.

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

1.49 “**Production Environment**” means the real-time setting where Authorized Users may utilize the SaaS Software, and includes the processes, data, hardware, and software needed to perform day-to-day operations.

1.50 “**Test Environment**” means the collection of defined hardware and software components with appropriate configuration settings that are necessary to test or validate the application or features under test. Test environment configuration must mimic the production environment in order to uncover any environment/configuration-related issues.

1.51 “**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 later of:
(i) September 1, 2019; or (ii) the Effective Date, and expire on August 31, 2022, unless earlier terminated as otherwise provided herein.

2.2 **Options to Renew.** The City has four options to renew the Agreement for a period of one year each. 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). City will provide notification of decision to renew to Contractor at least 30 days prior to the end of the current term.

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 the City issues written authorization (in the form of a Purchase Order) that the funds for the Agreement have been certified by the Controller. 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 **Payment.** Contractor shall provide an invoice to the SFMTA on an annual basis for Services to be provided in the succeeding year, unless a different schedule is set out in Appendix B (Calculation of Charges). Compensation shall be made for Services identified in the

invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 Days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists.

3.3.2 **Amount not to Exceed.** In no event shall the amount of this Agreement exceed Nine Hundred and Seventy-Four Thousand, Six Hundred Dollars (\$974,600). The breakdown of charges associated with this Agreement appears in Appendix B.

3.3.3 **Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until the SFMTA approves Services, including any Deliverables, as satisfying the requirements in all material respects of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. The City may reject Deliverables, equipment, components, materials and Services that do not conform in all material respects to the requirements of this Agreement. In such case, Contractor must replace the deficient items without delay at no cost to the City.

3.3.4 **Withhold Payments.** If Contractor fails to provide 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, provided City has previously notified Contractor of Contractor's failure or refusal to satisfy such material obligation.

3.3.5 **Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made as specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.6 **Reserved. (LBE Payment and Utilization Tracking System.)**

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

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

(b) The following information is required to sign up: (i) the enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

3.4 **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during Business Hours on prior written notice, 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 fewer 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.

Article 4 SaaS Services and Resources

4.1 **SaaS Licensed Software.** Subject to the terms and conditions of this Agreement, Contractor grants City and Authorized Users a renewable, irrevocable, 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 of 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 commercially available 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 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 Licensed SaaS Application or any related materials or Documentation.

4.2 Project Managers; Services Contractor Agrees to Perform.

4.2.1 Project Managers. Contractor and SFMTA shall each designate a Project Manager, who shall be accessible by telephone throughout the Term of the Agreement and shall be available 9 a.m. to 5 p.m. Monday through Friday, excluding City-designated holidays. These hours may be adjusted by mutual agreement between the SFMTA and Contractor. The SFMTA and Contractor shall use their best efforts to maintain the same Project Manager throughout the duration of the Agreement. However, if a Party needs to replace its Project Manager, the Party shall use commercially reasonable efforts to provide the other Party written notice thereof at least 45 Days prior to the date the Project Manager shall be replaced. Notwithstanding the foregoing, the Parties have the right to appoint temporary Project Managers in connection with short term unavailability, sick leave or reasonable vacations. Parties shall notify each other in advance of any such temporary appointments. The SFMTA may require Contractor to replace its Project Manager, by giving Contractor notification thereof and the SFMTA's objective reasons therefor.

Contractor Project Manager: Olivia Ius
1128 Howard Street
San Francisco, CA 94103
olivia@remix.com
415-715-0654

SFMTA Project Manager: Craig Raphael
1 South Van Ness Avenue, 7th Floor
San Francisco, CA 94103
craig.raaphael@sfmta.com
415-579-9740

4.2.2 **Services Contractor Agrees to Perform.** During the term of this Agreement, Contractor shall perform all of the services set forth in Appendix A (Scope of Services), and the following:

(a) Provide all hardware, software and other equipment at Contractor's hosting site as described in Appendix A or any description of Services (and any applicable disaster recovery site) as necessary to host and deliver the SaaS Application and SaaS Services described in Appendix A.

(b) Provide Authorized Users access to the SaaS Application and Services pursuant to the grant of access in Section 4.1.

(c) Comply with the Service Level Obligations described in Appendix C. It is mutually agreed and understood, that the Service Level Obligations will be applied beginning on the first full calendar month after the date Contractor provides the SFMTA access to the SaaS Application and Services.

(d) Maintain the correct operation of the SaaS Application and Services, Contractor's Website, and provide SaaS Maintenance Services and support services as specified in this Agreement.

(e) Provide telephone and/or email support for Authorized Users in the operation of the SaaS Application and Services.

(f) Provide Disaster Recovery Services as described in Section 14.4 and Appendix D.

4.3 **Acceptance; Document Delivery; Training.**

4.3.1 **Acceptance.** Contractor does not have an acceptance testing environment accessible exclusively to the City. After Contractor provides the SFMTA access to the SaaS Application, Contractor shall make continual improvements and updates to the SaaS Application, and shall test all features internally for compliance with the SaaS Application's specifications and the requirements of this Agreement. In addition, Contractor shall use feature flags to test major revisions, upgrades, and patches to the SaaS Application with a controlled subset of users referred to as the "Early Access Group." Any Authorized User may opt into the Early Access Group to test and review major revisions, upgrades, and patches before Contractor deploys to all users.

4.3.2 **Document Delivery.** Contractor shall deliver completed Documentation in electronic format for the SaaS Application and Services at the time it gives the SFMTA access to the SaaS Application and Services. The Documentation will accurately and completely describe the functions and features of the SaaS Application and Services, including all subsequent revisions thereto. The Documentation shall be understandable by a typical end user and shall provide Authorized Users with sufficient instruction such that an Authorized User can become self-reliant with respect to access and use of the SaaS Application and Services. The SFMTA shall have the right to make any number of additional copies of the Documentation at no additional charge. The SFMTA may withhold payment of Services Fee to Contractor until the SFMTA receives the completed Documentation.

4.4 **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 shall comply with the SFMTA's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at the SFMTA's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion of the Services within the project schedule specified in this Agreement.

4.5 **Subcontracting.**

4.5.1 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.

4.5.2 Contractor will not employ subcontractors.

4.6 **Independent Contractor; Payment of Employment Taxes and Other Expenses.**

4.6.1 **Independent Contractor.** For the purposes of this Article 4, "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.

4.6.2 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 shall be solely for 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.

4.7 Assignment. The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement; provided, however, that no approval by the City shall be required for Contractor to assign this Agreement to an affiliate or acquiring party, as applicable, in connection with a stock sale, merger or sale of all or substantially all of its assets. Contractor shall immediately notify City about any Assignment. Any purported assignment made in violation of this provision shall be null and void.

4.8 Warranty. Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

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

(b) 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; and

(c) 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.

(d) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract 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.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) 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 insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.3 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 contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.4 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.

5.1.5 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.

5.1.6 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with 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.

5.1.7 Reserved.

5.1.8 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 the 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 obligations under this 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 where such Claims are the result of the sole active negligence or willful misconduct of City. 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 third-party 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.

(a) If notified promptly in writing of any judicial action brought against City based on an allegation by a third party 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.

(b) If notified promptly in writing of any informal third party 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.

(c) 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 the applicable Authorization Document or relevant part of such Authorization Document may be terminated at the option of either Party hereto and Contractor shall refund to City all prepaid and unused amounts paid under this Agreement for the license of such infringing SaaS Application and/or Services.

(d) 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.

(e) The foregoing obligations do not apply to claims of infringement based on: (i) Software or portions or components thereof not supplied by Contractor; or (ii) the 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, where the alleged infringement would not have occurred without such combination.

(f) This section states Contractor's entire liability and City's exclusive remedy for infringement or misappropriation of intellectual property of a third party.

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 all material respects in accordance with the specifications applicable thereto. With respect to all Services to be performed by Contractor under this Agreement, including SaaS Application and Hosted 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 Contractor 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 Contractor shall use reasonable efforts to ensure 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 at the time of their receipt by Authorized Users.

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.

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 of Contractor.** Contractor's liability under this Agreement shall not exceed Nine Hundred and Seventy-Four Thousand, Six Hundred Dollars (\$974,600); provided, however, that this limitation on Contractor's liability shall not apply to (1) damages caused by Contractor's gross negligence or reckless or willful misconduct, (2) limit claims or general damages that fall within the insurance coverage of this agreement, (3) limit claims or general damages that fall within the insurance coverage of this agreement; (4) statutory damages specified in this Agreement, (5) wrongful death caused by Contractor, (6) Contractor's obligation to indemnify and defend City pursuant to the general indemnification clause and for intellectual property infringement, (7) Contractor's warranties under this Agreement; and (8) fines, damages or expenses caused by Contractor's violation of federal, state and/or local laws regarding privacy.

6.4 **Incidental and Consequential Damages.** Notwithstanding any other provision of this Agreement, in no event shall either Party be liable to the other Party, regardless of whether any claim is based on tort or any other theory of liability, for any consequential, incidental, special, or indirect 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.

Article 7 Payment of Taxes

7.1 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 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 the 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.

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 15 Days after written notice by City of such breach (15-day cure period), in which event Contractor shall refund to City all amounts paid under this Agreement for the Licensed 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 15-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 15 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.
- 4.7 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 continues for a period of 10 Days after receipt of written notice thereof from the SFMTA to Contractor.

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 reasonable 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.

8.3 **Bankruptcy.** In the event that either Party 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 the option of the other Party this Agreement shall terminate and be of no further force and effect. Upon termination of this Agreement pursuant to this Section, Contractor shall within two business days, return City Data in an agreed-upon machine readable format. Once Contractor has received written confirmation from City that City Data has been successfully transferred to City, Contractor shall within 30 Days purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within five Days that such purge and/or physical destruction has occurred. Secure disposal shall be accomplished by "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 Content. 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 10 Days of the expiration or termination of the SaaS Services return City’s data in an agreed-upon machine readable format. 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 Data has been successfully transferred to City, Contractor shall within 30 Days purge or physically destroy all City Data from its hosted servers or files and provide City with written certification within 10 Days that such purge and/or physical destruction has occurred. Secure disposal shall be accomplished by “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 at Contractor’s then current rates if the SFMTA opts to return to its own servers or SFMTA chooses a Successor Service Provider. Contractor’s then current rates shall not exceed then-current rates charged by other contractors in the industry for providing similar services. 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. All applicable terms and conditions of this Agreement shall apply to the Transition Services. This Section shall survive the termination of this Agreement.

8.5 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 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:

3.3.3	Payment Limited to Satisfactory Services
3.4	Audit and Inspection of Records
3.5	Submitting False Claims
4.6	Independent Contractor; Payment of Employment Taxes and Other Expenses
Article 5	Insurance; Indemnity and Warranties
6.1	Liability of City
6.4	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.4	Transition Services and Disposition of Content
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	Proprietary or Confidential Information

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, upon receipt of payment therefore, 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 subcontractor(s) 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. For clarity, Deliverables shall not include the SaaS Software, SaaS Services, SaaS Applications or any technical information and know-how, including any invention, improvement, or discovery, whether or not patentable, that is conceived, owned, or controlled by Contractor prior to the Effective Date, or that are generated or created independently of this Agreement, including any patent rights which claim such technical information or know-how.

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 that 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.*). Contractor 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 Reserved.

10.5 Nondiscrimination Requirements

10.5.1 Non Discrimination 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. 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 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B (LBE Ordinance). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 Minimum Compensation Ordinance. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

10.8 Health Care Accountability Ordinance. Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

10.9 First Source Hiring Program. Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

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 that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with 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, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved

by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. 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 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.12 Reserved. (Slavery Era Disclosure).

10.13 Reserved. (Working with Minors).

10.14 Consideration of Criminal History in Hiring and Employment Decisions

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

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. (Sugar-Sweetened Beverage Prohibition).**

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: Lisa Walton, CTO
Chief Technology Officer
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 3rd Floor
San Francisco, CA 94103
Lisa.Walton@sfmta.com

To Contractor: Sam Hashemi
Co-Founder & Chief Executive Officer
Remix Software, Inc
1128 Howard Street
San Francisco, CA 94103
sam@remix.com

Any notice of default must be sent by registered mail. 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).

11.3 **Reserved.**

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 the 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 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, shall remain the exclusive property of the City. The 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 that is itself a trade secret or which would cause substantial injury to the competitive position of the Contractor if published.

13.1.2 Use of City Data. 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 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 or 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 other than security or service delivery analysis that is not explicitly authorized.

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 part, as an independent platform and machine-readable file. Such file formats include, without limitation, plain text files such as comma-delimited tables, extensible markup language, and javascript object notation. 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 Back-up 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 C 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, act, SaaS Software Error, omission, negligence, misconduct, or breach 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, and 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 Data 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 18 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) Without limiting Contractor's obligations of indemnification as described in Article 5 of this Agreement, indemnify, defend, and hold harmless City for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from City in connection with the occurrence;

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

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

(j) 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.

(k) 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.

(1) 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 City Confidential Information.

(a) “City Confidential Information” means the confidential information and proprietary information of the City, including, but not limited to, personally-identifiable information (PII) and other information or data subject to local, state or federal laws restricting the use and disclosure of such information or data. These laws include, but are not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

(b) Contractor understands and agrees that, the performance of the work or services under this Agreement may involve access to City Data that is City Confidential Information. Contractor and any subcontractors or agents shall use City Confidential Information only in accordance with all applicable local, state and federal laws restricting the access, use and disclosure of City Confidential Information, and only as necessary in the performance of this Agreement.

(c) Contractor’s failure to comply with any requirements of local, state or federal laws restricting access, use and disclosure of City Confidential Information shall be deemed a material breach of this Agreement, for which City may terminate this Agreement. In addition to termination or any other remedies set forth in this Agreement or available in equity or law, if the City is terminating the Agreement, the City may bring a false claim action against the Contractor pursuant to Chapters 6 or 21 of the Administrative Code, or debar the Contractor.

(d) Contractor agrees to include all of the terms and conditions regarding City Confidential Information contained in this Agreement in all subcontractor or agency contracts providing services under this Agreement.

13.2.2 Contractor Confidential Information. Contractor Confidential Information means Contractor’s confidential and proprietary technical, trade, or business information that Contractor discloses to City under this Agreement in writing marked “Confidential,” or if disclosed orally or visually is summarized in a writing marked “Confidential.” Notwithstanding the foregoing, Contractor Confidential Information shall not include information regarding Contractor that: (a) is publicly available at the time of disclosure, or subsequently becomes publicly available through no fault of City; (b) is rightfully acquired by City from a third party who is not in breach of an agreement to keep such information confidential; (c) is independently developed by City without use of Contractor Confidential Information; or (d) was already known to City receiving the same at the time of disclosure.

13.2.3 Obligation of Confidentiality.

(a) Subject to San Francisco Administrative Code Section 67.24(e), any state open records or freedom of information statutes, and any other applicable laws, the Parties agree 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 employees, agents, or subcontractors of a Party 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.

(b) The Parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential.

13.2.4 **Nondisclosure.**

(a) The receiving Party of Confidential Information agrees and acknowledges that it shall have no proprietary interest in the 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 disclosing Party, any of the Confidential Information it produces, receives, acquires or obtains from the disclosing Party.

(b) The receiving Party shall take all necessary steps to ensure that the Confidential Information is securely maintained. The receiving Party's obligations set forth herein shall survive the termination or expiration of this Agreement. In the event the receiving Party becomes legally compelled to disclose any of the Confidential Information, it shall provide the disclosing Party with prompt notice thereof and shall not divulge any information until the disclosing Party 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.

13.2.5 Litigation Holds. Contractor shall retain and preserve City Data in accordance with the City's written 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 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies 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 one business day after it receives the request. Contractor shall not respond to subpoenas, service of process, and other 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.

13.2.7 Cooperation to Prevent Disclosure of Confidential Information. Each Party shall use its best efforts to assist the other Party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each Party shall advise the other Party immediately in the event either Party 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 each Party will cooperate with the other Party in seeking injunctive or other equitable relief against any such person.

13.2.8 Remedies for Breach of Obligation of Confidentiality. Each Party acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the other Party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, a Party 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, in the case of City and at the sole election of City, the immediate termination of this Agreement, without liability to City.

13.2.9 Surrender of Confidential Information upon Termination. Upon termination of this Agreement, in whole or in part, each Party shall, within five Days from the date of termination, return to the other Party any and all Confidential Information received from the other Party, or created or received by a Party on behalf of the other Party, which are in such Party's possession, custody, or control; provided, however, that Contractor shall return City Data to City following the timeframe and procedure described further in this Agreement. Should Contractor or City determine that the return of any Confidential Information, other than City Data, is not feasible, such Party shall destroy the Confidential Information and shall certify the same in writing within five Days from the date of termination to the other Party, pursuant to Article 8 of this Agreement.

13.2.10 Data Security. To prevent unauthorized access or "hacking" of City Data, Contractor shall at all times during the Term provide and maintain up-to-date security with respect to (a) the Services, (b) the Contractor's Website, (c) Contractor's physical facilities, and (d) Contractor's networks. Contractor shall provide security for its networks and all Internet connections consistent with best practices observed by well-managed SaaS working in the Contractor's industry, and shall promptly install all patches, fixes, upgrades, updates and new versions of any security software it employs. Contractor shall 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. For information disclosed in electronic form, Contractor agrees that appropriate safeguards include electronic barriers (e.g., "firewalls," Transport Layer Security (TLS), Secure Socket Layer [SSL] encryption or most current industry standard encryption, intrusion prevention/detection or similar barriers) and secure authentication (e.g., password protected) access to the City's Confidential Information and hosted City Data. For information disclosed in written form, Contractor agrees that appropriate safeguards include secured storage of City Data. City Data classified as Confidential Information shall be encrypted at rest and in transit with controlled access. Contractor also shall 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 Information Security Management, NIST Special Publication 800-53 Revision 4 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. Contractor warrants to the City compliance with the following (as periodically amended or updated) as applicable:

(a) The California Information Practices Act (Civil Code §§ 1798, et seq).

13.2.11 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: (a) ensure the security and confidentiality of the City Data; (b) protect against any anticipated threats or hazards to the security or integrity of the City Data; (c) protect against unauthorized disclosure, access to, or use of the City Data; (d) ensure the proper disposal of City Data; and, (e) ensure that all of Contractor's employees, agents, and subcontractors, if any, comply with all of the foregoing. In no case shall the safeguards of Contractor's data privacy and information security program be less stringent than the safeguards used by City.

13.2.12 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 Section.

13.2.13 Data Transmission. The 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 (using HTTPS or SFTP or most current encryption methods, or other means, as directed by the SFMTA). The 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 the Contractor. The 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 shall not access City Data from outside the continental United States.

13.3 SSAE 16, SOC 2/SOC 3 and/or SOC 1 Audit Report.

13.3.1 During the Term of the Agreement, Contractor shall provide, on an annual basis, the SSAE 16, or SOC 1 Audit report ("Audit Reports") (if Contractor is using a hosting service provider, the Audit Report it receives from its service provider) 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 30 Days after they are received by Contractor. Upon City's written request, Contractor shall provide a so-called "negative assurance opinion" to City as soon as said opinion is received from Contractor's hosting service provider. Contractor shall on an annual basis, and otherwise as reasonably requested by City: (i) provide the foregoing Audit Reports to City and (ii) request such "negative assurance opinions" on City's behalf. Contractor shall implement reasonably required safeguards as identified by City or by any audit of Contractor's data privacy and information security program. If the Contractor is using cloud computing or hosting services to store City Data, for all City Data that is stored by these providers the Contractor may satisfy this section by certifying and providing written documentation that its cloud computing and hosting services providers have conducted their own audits.

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 SSAE Audit Report is unsatisfactory.

13.3.3 **Information Security Audits.** The 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.

13.4 **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:

15.2 Appendices:

- A. SaaS Application & Hosting 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>Tom Maguire Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Isidro A. Jiménez Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Remix Software, Inc.</p> <hr/> <p>Sam Hashemi Co-Founder & Chief Executive Officer 1128 Howard Street San Francisco, CA 94103</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 vendor number: 0000012325</p>
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Appendix A Scope of Services

- I. SaaS Application and SaaS Services**
- II. SaaS Data Centers**
- III. SaaS Maintenance Services**
- IV. City Responsibilities**
- V. Technical Support & Training**

I. SaaS Application and SaaS Services: Contractor shall set up and provide for the term of this Agreement the SaaS Application and SaaS Services, including the Remix Transit Planning Software (i.e., SaaS Application) and all components, hardware, other Software, firmware, and other equipment necessary to host and deliver the SaaS Application (i.e., SaaS Services) as follows:

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

1. Fast and accurate sketch planning using existing transit stop infrastructure;
2. Instant demographic impact analysis;
3. Instant cost estimates;
4. Unlimited exports (MS Excel, shapefile, KML, frequency-based GTFS, high-resolution image);
5. Unlimited custom data layers (polygon-based shape files);
6. Unlimited GTFS uploads;
7. Public engagement and share features;
8. Travel-time isochrone visualizations;
9. Title VI Engine (US) - generate a service equity analysis in less than 10 minutes; and
10. Consistent and regular product improvements and feature launches.

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. Method of access will be published through Contractor portal and be made available to Authorized Users with elevated privileges.

C. Back-Up of City's Data:

1. Contractor shall provide up to 36 months of on-line hourly data retention for operation and functionality of the SaaS Application.

2. Contractor shall provide incremental backups of City Data 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 to include previous eight weeks.

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

1. Contractor shall make available as needed a single Back-up Environment to serve as the back-up or "failover" environment for the SaaS Application and SaaS Services.

2. Contractor shall use feature flags in a live environment to test all major software revisions and upgrades with a controlled set of users referred to as the "Early Access Group". This function shall be available to the City and Contractor for the evaluation and eventual promotion of SaaS Application updates, patches, fixes, or otherwise deemed tests. The live, test environment shall perform at 50% or better than the production environment.

F. Reporting: Contractor shall provide to the City electronic notification of any significant incidents or breaches that occur within the live, test environment or to the SaaS Application within one day of discovery, and in subsequent monthly reports. 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 Application: Contractor (or its hosting services contractor) shall host the SaaS Application on computers owned or controlled by the 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 SaaS Application Uptime: Other than Scheduled SaaS Maintenance as outlined in Section III, emergency maintenance described below, Force Majeure as described in the Agreement, or 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 only 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:

A. During any month, Contractor shall use commercially reasonable efforts to prevent more than 60 minutes of aggregate downtime for unscheduled SaaS maintenance of the SaaS Application and SaaS Services during regular business hours (6:00am to 6:00pm US Pacific Time). If Contractor fails to meet this requirement, Contractor shall credit the City 5% of the Services Fee owing to Contractor that month for each 30 consecutive minutes, or fraction thereof, of downtime. No more than one credit shall accrue per day, and total credits for any calendar month shall cap out at one week's worth of Services Fees. Contractor shall only apply a credit to the month in which the corresponding downtime occurs. Credits for downtime cannot be redeemed for cash.

B. Downtime shall begin to accrue as soon as the City recognizes downtime is taking place and shall continue until Contractor restores the availability of the SaaS Application or SaaS Services. In order to receive downtime credit, City must notify Contractor in writing within 24 hours from the time of downtime, and failure to provide such notice will forfeit the right to receive the credit for that occurrence of downtime.

C. Contractor's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Contractor to provide adequate service levels under this Agreement.

4. Emergency Maintenance: If Force Majeure Events or emergencies arise or continue, Contractor shall be entitled to take any action 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 component of the SaaS Application or SaaS Services. 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 Application 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 downtime of any component of the SaaS Application or SaaS Services 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 Craig.Raphael@sfmta.com which will include at least a brief description of the reason for the downtime 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 materially reduce or eliminate functionality in the SaaS Application or SaaS Services. Where Contractor has materially reduced or eliminated functionality in the SaaS Application or SaaS Services, City, in its sole discretion, 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 Services 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.

II. SaaS Data Centers

A. 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.

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

Data Center:

Amazon Web Services US-East1

C. 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 SOC 1 Audit Report at least annually, in accordance with Section 13.3 of this Agreement.

D. 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.

E. 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. Contractor shall maintain the SaaS Application.

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 Application and SaaS Services, as described in the Documentation, is available to Authorized Users; (b) that the functionality of the SaaS Application and SaaS Services is in accordance with the representations and warranties set forth herein, including but not limited to, the SaaS Application and SaaS 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 Application and SaaS Services work with the non-hosted browser version. Any Authorized User may opt into Contractor’s “Early Access Group” to test and review SaaS Software Version upgrades, SaaS Software Revisions, and SaaS Software patches before they are deployed to all users.

C. Response to SaaS Issues. Contractor shall provide oral 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 defined under Section V.

D. 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 and SaaS Services are 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 I.E of this Appendix.

IV. City Responsibilities

A. City shall provide Contractor with timely notification of any SaaS Issues by either of these methods:

1. Contacting Contractor’s Customer Support Kyle Boehm at (415) 484-7126.

2. If City cannot readily access the Contractor portal, City may contact Contractor at the Customer Support Contact listed above.

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

C. Designation of Point of Contact. City shall assign an individual or individuals to serve as the designated contact(s) for all communication with Contractor during SaaS Issue investigation and resolution.

D. Discovery of SaaS Software Errors. Upon discovery of an 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. Technical Support

A. Contractor shall provide technical support for SaaS Issues of SaaS Severity Levels 1 and 2, 24 hours per day, seven days per week, 365 days per year.

B. 24x7 Technical Support: Authorized Users may make Technical Support requests by calling or emailing Contractor’s Technical Support. The Technical Support staff shall assign to the request the SaaS Severity Level (as defined herein) indicated by the requestor. SaaS Severity Level 1 and 2 items will be addressed 24/7. SaaS Severity Level 3 and 4 items will be addressed during Business Hours between 8am and 6pm Pacific time.

SaaS Severity Level	Target Response Time
<p>SaaS Severity Level 1: <i>Requires immediate attention—Critical production functionality is not available or a large number of users cannot access the SaaS Application. Causes a major business impact where service is lost or degraded and no workaround is available, preventing operation of the business.</i></p>	<p><i>Request Response Time: 30 minutes during business hours; within 8 hours of next business day if received outside of business hours.</i></p> <p><i>Request Resolution Time Target: < 2 hours.</i></p> <p><i>Maximum Permitted Request Resolution Time: < 48 hours</i></p>
<p>SaaS Severity Level 2: <i>Requires priority attention - Some important production functionality is not available, or a small number of users cannot access the system. Causes significant business impact where service is lost or degraded and no workaround is available; however, the business can continue to operate in a limited fashion.</i></p>	<p><i>Request Response Time: 1 hour during business hours; within 8 hours of next business day if received outside of business hours</i></p> <p><i>Request Resolution Time Target: < 4 hours</i></p> <p><i>Maximum Permitted Request Resolution Time: < 96 hours</i></p>
<p>SaaS Severity Level 3: <i>Requires attention –There is a problem or inconvenience. Causes a business impact where there is minimal loss of service and a workaround is available such that the system can continue to operate fully and users are able to continue business operations.</i></p>	<p><i>Request Response Time: 1 hour during business hours; within 8 hours of next business day if received outside of business hours</i></p> <p><i>Request Resolution Time Target: < 6 hours</i></p> <p><i>Maximum Permitted Request Resolution Time: < 7 Days</i></p>
<p>SaaS Severity Level 4: <i>There is a problem or issue with no loss of service and no business impact.</i></p>	<p><i>Request Response Time: 1 hour. during business hours; within 8 hours of next business day if received outside of business hours</i></p> <p><i>Request Resolution Time Target: < 24 hours</i></p> <p><i>Maximum Permitted Request Resolution</i></p>

SaaS Severity Level	<i>Target Response Time</i>
	<i>Time: < 7 Days</i>

Appendix B Calculation of Charges

Contractor shall perform the Services described in this Agreement, and any ancillary administrative tasks necessary to perform the Services, in exchange for payment by the SFMTA of a fixed all-inclusive, annual fee (Services Fee).

The annual Services Fee shall be One Hundred Thirty Eight Thousand Two Hundred Dollars (\$138,200) for the initial term of this Agreement invoiced annually, and One Hundred Forty Thousand Dollars (\$140,000) for each of the four one-year options.

Effective Date	September 1, 2019
Commitment Term	3 years <ul style="list-style-type: none"> • 9/1/2019 to 8/31/22 4 one-year options to renew <ul style="list-style-type: none"> • 9/1/2022-8/31/2026
Remix License Pricing	US \$414,600 / 3 years <ul style="list-style-type: none"> • US \$138,200 annually, based on a total fixed route fleet of 601. • Remix licenses for an unlimited number of users within organization. • Software as a Service (SaaS): fully hosted, cloud-based web platform. • Dedicated Customer Success staff. • Enterprise Support: response to requests in 1 business day.
	Year to Year Option (4-Year Renewal) <ul style="list-style-type: none"> • US \$140,000 annually Total Not-to-Exceed Amount with Options: <ul style="list-style-type: none"> • US \$974,600
Marketing Terms	Willingness to work with Remix to develop a case study, mutually agreeable press release, ability to use Customer as a reference.

No invoices for Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

Appendix C Service Level Obligations

A. Time is of the Essence. For the term of this Agreement, Contractor shall provide SaaS Services, Force Majeure events excepted, during the applicable Service Windows and in accordance with the applicable Service Levels as described herein, time being of the essence.

B. Service Levels.

1. “Availability” Service Level:

a. Definitions:

i. Actual Uptime: The total minutes in the reporting month that the Services were actually available to Authorized Users for normal use.

ii. Scheduled Downtime: The total minutes in the reporting month during which Scheduled SaaS Maintenance was performed.

iii. Scheduled Uptime: The total minutes in the reporting month less the total minutes represented by the Scheduled Downtime.

b. Service Level Standard. Services shall be available to Authorized Users for normal use 100% of the Scheduled Uptime.

i. Calculation: $(\text{Actual Uptime} / \text{Scheduled Uptime}) * 100 =$ Percentage Uptime (as calculated by rounding to the second decimal point)

ii. Performance Credit.

(a) Where Percentage Uptime is greater than 99.9%: No Performance Credit will be due to City.

(b) Where Percentage Uptime is equal to or less than 99.9%: City shall be due a Performance Credit in the amount of 5% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Uptime. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Company will only apply a credit to the month in which the incident occurred.

(c) Subsequent Failures to Maintain Service Level: For each similar failure in a subsequent month, the Performance Credit due for the particular SaaS Severity Level shall remain the same. The City may deduct Performance Credits from monies due to the Contractor. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Company will only apply a credit to the month in which the incident occurred.

2. Response Time Service Level.

a. Definition(s).

i. **Response Time:** The interval of time from when an Authorized User requests, via the Services, a Transaction to when visual confirmation of Transaction completion is received by the Authorized User. For example, Response Time includes the period of time representing the point at which an Authorized User enters and submits data to the Services and the Services display a message to the Authorized User that the data has been saved.

ii. **Total Transactions:** The total of Transactions occurring in the reporting month.

iii. **Transaction(s):** Services webpage loads, Services webpage displays, and Authorized User Services requests.

b. **Service Level Standard.** Transactions shall have a Response Time of two seconds or less 99.9% of the time each reporting month during the periods for which the Services are available.

i. **Calculation.** $((\text{Total Transactions} - \text{Total Transactions failing Standard}) / \text{Total Transactions}) * 100 = \text{Percentage Response Time}$ (as calculated by rounding to the second decimal point).

ii. Performance Credit.

(a) **Where Percentage Response Time is greater than 99.9%:** No Performance Credit will be due to City.

(b) **Where Percentage Response Time is equal to or less than 99%:** City shall be due a Performance Credit in the amount of 5% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Response Time. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Company will only apply a credit to the month in which the incident occurred.

(c) **Subsequent Failures to Maintain Service Level:** For each similar failure in a subsequent month, the Performance Credit due for the particular SaaS Severity Level shall remain the same. The City may deduct Performance Credits from monies due to the Contractor. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Company will only apply a credit to the month in which the incident occurred.

3. “Technical Support Problem Response” Service Level.

a. Definition.

i. Total Problems: The total number of problems occurring in the reporting month.

b. Service Level Standard. Problems shall be confirmed as received by Contractor 100% of the time each reporting month, in accordance with the Request Response Time associated with the SaaS Severity Level.

i. Calculation. $((\text{Total Problems} - \text{Total Problems failing Standard}) / \text{Total Problems}) * 100 = \text{Percentage Problem Response}$ (as calculated by rounding to the second decimal point). Note: This Calculation must be completed for each SaaS Severity Level.

ii. Performance Credit.

(a) SaaS Severity Level 1 – 2.

(1) Where Percentage Problem Response is greater than 99.9%: No Performance Credit will be due to City.

(2) Where Percentage Problem Response is equal to or less than 99%: City shall be due a Performance Credit in the amount of 5% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response.

(b) SaaS Severity Level 3 – 4.

(1) Where Percentage Problem Response is greater than 99.9%: No Performance Credit will be due to City.

(2) Where Percentage Problem Response is equal to or less than 99%: City shall be due a Performance Credit in the amount of 5% of the Services Fees (as calculated on a monthly basis for the reporting month) for each full 1% reduction in Percentage Problem Response. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Company will only apply a credit to the month in which the incident occurred.

(c) Subsequent Failures to Maintain Service Level: For each similar failure in a subsequent month, the Performance Credit due for the particular SaaS Severity Level shall remain the same. The City may deduct Performance Credits from monies due to the Contractor. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event. Company will only apply a credit to the month in which the incident occurred.

C. Service Level Reporting. Contractor shall provide reports to City describing the performance of the SaaS Services and of Contractor as compared to the service level standards

described herein on a monthly basis, upon request of the City. The reports shall be in a form agreed-to by City, and, in no case, contain no less than the following information: (1) actual performance compared to the Service Level Standard; (2) the cause or basis for not meeting the service level standards described herein; (3) the specific remedial actions Contractor has undertaken or will undertake to ensure that the service level standards described herein will be subsequently achieved; and, (4) any Performance Credit due to City. Contractor and City will meet as often as shall be reasonably requested by City, but no less than monthly, to review the performance of Contractor as it relates to the service level standards described herein. Where Contractor fails to provide a report for a service level standard described herein in the applicable timeframe, the service level standard shall be deemed to be completely failed for the purposes of calculating a Performance Credit. Contractor shall, without charge, make City's historical service level standard reports to City upon request.

D. Failure to Meet Service Level Standards. In the event Contractor does not meet a service level standard described herein, Contractor shall: (a) owe to City any applicable Performance Credit, as liquidated damages and not as a penalty; and, (b) use its best efforts to ensure that any unmet service level standard described herein is subsequently met. Notwithstanding the foregoing, Contractor will use its best efforts to minimize the impact or duration of any outage, interruption, or degradation of Service. In no case shall City be required to notify Contractor that a Performance Credit is due as a condition of payment of the same.

E. Termination for Material and Repeated Failures. City shall 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 where Contractor fails to meet any service level standards described herein: (1) to such an extent that the City's ability, as solely determined by City, to use the SaaS Services is materially disrupted, Force Majeure events excepted; or, (2) for four months out of any 12-month period.

F. Audit of Service Levels. No more than quarterly, City shall have the right to audit Contractor's books, records, and measurement and auditing tools to verify service level obligations achievement and to determine correct payment of any Performance Credit. Where it is determined that any Performance Credit was due to City but not paid, Contractor shall immediately pay to City the applicable Performance Credit.

Appendix D

Disaster Recovery Plan

Remix uses Heroku and AWS for the hosting of our platform and are reliant upon their disaster recovery plans. The server platform automatically restores customer applications and our servers Postgres databases in the case of an outage. The servers' platform is designed to dynamically deploy applications within the Remix servers cloud, monitor for failures, and recover failed platform components including customer applications and databases (See attached Remix Software Security and Storage Protocol).