**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SYSTEM CONTRACT**

**BETWEEN**

##### **CITY OF DETROIT, MICHIGAN**

**AND**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**CONTRACT NO.**

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**CITY OF DETROIT**

#### \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SYSTEM CONTRACT

 **This \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ System Contract** is entered into by and between the City of Detroit, a Michigan municipal corporation, acting by and through its \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_ organized under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with its principal place of business located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**Recitals:**

 Whereas, the City desires to engage the Contractor to deliver the System as set forth in this Contract; and

 Whereas, the Contractor desires to provide the System as set forth in this Contract;

 Accordingly, the parties agree as follows:

# Article 1. **Definitions** and Exhibits

* 1. The following Capitalized words and expressions or pronouns used in their stead and as used in this Contract shall have the following meanings:

**ADD OR DELETE DEFINITIONS AS NECESSARY TO CONFORM TO TRANSACTION**

“AI Factsheet” means the information gathering form completed by the Contractor describing in detail the AI System on file with the Director of the City’s Department of Innovation and Technology and updated from time to time as required by the City in this Contract, the AI Policy and Principles or the City’s additonal written request.

“AI Incident” means an alleged harm or near harm event to people, property, reputation, technical integrity of the environment where an AI system is implicated, including, but not limited to the System. Examples of AI incidents include providing false information, copyright infringement, generating harmful bias, system misuse, exposure of sensitive information, and liability risk.

"Artificial Intelligence” or “AI” means a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations, or decisions influencing real or virtual environments. AI systems use machine- and human-based inputs to perceive real and virtual environments; abstract such perceptions into models through analysis in an automated manner; and use model inference to formulate options for information or action.

“AI Policy and Principles” means the City’s policy outlining the requirements for the City’s purchase and use of AI and AI Systems, on file with the City’s Department of Innovation and Technology and updated by the City from time to time.

“AI System” means any data system, software, hardware, application, tool, or utility that operates in whole or in part using AI.

“Amendment" means modifications or changes in this Contract that have been mutually agreed upon by the City and the Contractor in writing and approved by the City Council.

"API” means application programing interface, which is a software intermediary that allows two applications to communicate.

“Associates" means the personnel, employees, consultants, subcontractors, agents, and parent company of the Contractor or of any Subcontractor, now existing or subsequently created, and their agents and employees, and any entities associated, affiliated, or subsidiary to the Contractor or to any subcontractor, now existing or subsequently created, and their agents and employees.

"City" means the City of Detroit, a Michigan Municipal Corporation, acting through the office or department named in the Contract as contracting for the System on behalf of the City.

"City Council" means the legislative body of the City.

"Contract" means each of the various provisions and parts of this document, including all attached Exhibits and all Amendments, if any, as executed and approved by the appropriate City departments or offices and by the City Council.

"Contractor" means \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ and authorized to do business in the State of Michigan.

“Data” means any and all information, including, but not limited to Personal Information, supplied by the City to the Contractor, any of the City’s information accessed or used by the Contractor in connection with the System or performance of this Contract, and any other information uploaded or transmitted to or stored on the System by the City.

“Database Schemas” means the structure for the organization of Data within the System.

“Data Storage” means to the online electronic secure storage of Data during the Use of the System.

“Documentation” means any and all printed or electronic guides and manuals, including sales, marketing and training materials provided by the Contractor for the authorized Use of the System.

“Equipment” means the hardware and devices provided by the Contractor as described on Exhibit A.

“Exhibit A” is the complete and detailed description of the System.

"Exhibit B” is the Fee Schedule for this Contract and sets forth the amount of compensation to be paid to the Contractor, including any Reimbursable Expenses.

"Exhibit C" is the Contractor’s Statement of Political Contributions and Expenditures.

"ISO 27001” means a security framework created by the International Organization for Standardization that assesses a company’s ability to keep its data safe. To achieve certification, companies must complete an audit to verify that they comply with ISO 27001’s rigorous standards.

"Personal Information” means information which relates to an identified or identifiable individual, and includes any information defined from time to time as “personal information” under applicable state or federal privacy legislation.

“Public Servant" means the Mayor, members of City Council, City Clerk, appointive officers, any member of a board, commission or other voting body established by either branch of City government or the City Charter, and any appointee, employee or individual who provides services to the City within or outside of its offices or facilities pursuant to a personal services contract.”

“Purchase Order” means any City purchase order issued in connection with this Contract to allow the Contractor to invoice and be paid by the City.

“Records" means all books, ledgers, journals, accounts, documents, and other collected Data in which information is kept regarding the performance of this Contract and the function of the System.

"Reimbursable Expenses" means only those costs incurred by the Contractor in the performance of the System, such as travel costs and document reproduction costs that are identified in Exhibit B as reimbursable.

“Risks” means in connection with any AI Systems \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

“Services” means the services provided by the Contractor as described on Exhibit A.

“SOC 2 Type 2 Report” means a data safety and security report developed by the American Institute of Certified Public Accountants which specifies how an organization handles its customers’ data.

"Subcontractor" means any person, firm or corporation, other than employees of the Contractor that contracts with the Contractor, directly or indirectly, to perform in part or assist the Contractor in achieving the objectives of this Contract.

"System" means the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ System provided by the Contractor, including all necessary hardware and software, as more precisely and completely defined in Exhibit A.

"Unauthorized Acts" shall mean any acts by a City employee, agent or representative that are not set forth in this Contract and have not been approved by City Council as part of this Contract.

 "Use” shall mean the ability for the City to login with username and password and access the System via the internet and conduct business on the System as described in Exhibit A.

“Work Product" shall mean the originals, or copies when originals are unavailable, of all materials prepared by the Contractor or the City under this Contract or in anticipation of this Contract, including but not limited to the Data, Data Schemas, studies, briefs, drawings, maps, models, photographs, files, records, computer printouts, estimates, memoranda, computations, papers, supplies, notes, recordings, and videotapes, whether such materials are reduced to writing, magnetically or optically stored, or kept in some other form. For the avoidance of any doubt, Work Product does not include the System or any of the Contractor’s intellectual property.

# Article 2. Engagement of Contractor

2.01 By this Contract, the City engages the Contractor, and the Contractor hereby agrees to provide the System, the Equipment and the Services set forth in Exhibit A, in accordance with the terms and conditions contained in this Contract.

2.02 The Contractor, the System, the Equipment and the Services shall perform in a satisfactory manner as shall be determined within the sole and reasonable discretion of the City. In the event that there shall be any dispute between the parties with regard to the extent, character and progress of the System to be provided or the quality of performance under this Contract, the interpretation and determination of the City shall govern.

* 1. The Contractor shall confer as necessary and cooperate with the City in order that the implementation of the System may proceed in an efficient and satisfactory manner. The Contractor must attend all conferences, consultations and public hearings or appearances deemed necessary by the City to ensure that the Contractor will be able to properly and fully perform the objectives as set forth in this Contract.

2.04 The System the Equipment and the Services are subject to the review, approval and acceptance of the City for completeness and fulfillment of the requirements of this Contract. Neither the City's review, approval nor payment for any of the amounts listed on Exhibit B shall be construed to operate as a waiver of any rights under this Contract, and the Contractor shall be and will remain liable in accordance with applicable law for all damages to the City caused by the Contractor's incorrect performance or nonperformance of the System, Equipment or Services furnished under this Contract.

* 1. The City and the Contractor expressly acknowledge their mutual understanding and agreement that there are no third-party beneficiaries to this Contract and that this Contract shall not be construed to benefit any persons other than the City and the Contractor.
	2. The City will not directly or indirectly through any third parties attempt to reverse-engineer or de-compile the operation of the System in any manner through current or future available technologies, except that the City may perform all authorized acts under the terms of this Contract, including without limitation, modifying the Data.
	3. During the term of this Contract the Contract shall provide the City access to Work Product immediately upon the City’s request. Upon its termination of this Contract the Contractor shall deliver or provide prompt access to the City to the Work Product. This covenant shall survive the termination of this Contract.
	4. The Contract will provide the City with sixty (60) days written notice in case the Contractor stops using the \_\_\_\_\_\_\_\_\_\_\_\_\_cloud as described on Exhibit A.
	5. The City agrees that the Contractor may use and disclose the “City of Detroit, Michigan” in its marketing material with prior written approval of the City, which will not be unreasonably withheld.
	6. The City shall be entitled to provide the Contractor with information and feedback concerning the System’s functional requirements and product definition which are not addressed in Exhibit A and which the Contractor shall consider when formulating the product development roadmap and plans. This co-operative process between Contractor and the City does not create any ownership interest on the part of the City in the products so developed by the Contractor should the Contractor incorporate any of the City’s suggestions into the development plan or ultimately into the System.
	7. On March 1, June 1, September 1 and January 1, of each calendar year during the term of this Contract, the Contractor shall provide “Call Center Performance Reports” to the City which shall contain the number of calls for service, the level of urgency of the call and whether the problem was resolved on the call.
	8. Upon execution of this Contract, at no cost to the City the Contractor shall provide proof of their ISO 27001 certification or a copy of the most recent SOC 2 Type 2 Report.  For each calendar year thereafter during the term of this Contract, at the City’s written request, the Contractor shall provide the City with updated the proof of ISO 27001 certification or the most recent SOC 2 Type 2 Report.
	9. If at the time of execution of this Contract the Contractor is unable to provide either proof of their ISO 27001 certification or a copy of the most recent SOC 2 Type 2 Report, then the Contractor agrees to provide such proof or a copy of the most recent SOC 2 Type 2 Report, at no cost to the City, within the earlier of (i) ninety (90) days after the end of the calendar year or (ii) thirty (30) days after Contractor’s receipt.
	10. Within 10 days of when the Contractor becomes aware of a data breach or potential data breach, the Contractor shall immediately notify the City in writing of the breach or potential breach. In the notification, the Contractor shall include information about the breach or potential breach, including, but not limited to, the timing and duration of the breach or potential breach, the impact on the City’s operation or use of the System, if any, and the steps taken or to be taken to address the breach, mitigate the damages and steps to recover.
	11. In the event of an AI Incident, , the Contractor shall thoroughly investigate their systems and promptly report findings to the City.
	12. The Contractor hereby grants the City a non-exclusive, non-transferable right to Use and access the System for the City’s internal business purposes, during the term of this Contract.

# Article 3. Contractor's Representations and Warranties

3.01 To induce the City to enter into this Contract, the Contractor represents and warrants to that: it is duly organized, validly existing, and in good standing in the jurisdiction in which Contractor was organized, formed, or incorporated, as applicable, and is otherwise in good standing and authorized to transact business in Michigan and is duly qualified to provide the System as set forth in this Contract, and that the execution of this Contract is within the Contractor's authorized powers, is not in contravention of federal, state or local law, and will not cause a breach of any other contract to which the Contractor is a party.

3.02 The Contractor makes the following representations and warranties specifically in connection with the System, the Equipment and the Services:

(a) The System, the Equipment and the Services shall perform according to the specifications and representations set forth in Exhibit A and according to any other specifications and representations, including any Documentation, provided by the Contractor to the City;

(b) The System, the Equipment and the Services will be fit for the City’s particular purposes as expressed Exhibit A and the RFP.

(c) The Contractor has the full and unencumbered rights and powers to grant the City access to and permission to Use the System, including the underlying \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and including all upgrades, updates, improvements, modifications, enhancements or customizations, and including any third party components and platforms embedded in the System, and the rights granted herein will not violate the terms of any of its agreements with any third party;

(d) The Contractor’s execution, delivery, and performance of this Contract will not constitute a violation of any judgment, order or decree, a default under any agreement by which it or any of its assets are bound or an event that would, with notice or lapse of time, constitute such a default;

(e) The System is free of any software, programs or routines, commonly known as "disabling code," that are designed to cause the System to be destroyed, damaged, or otherwise made inoperable in the course of the City’s Use of the System;

(f) The System is free of any known or reasonably discoverable computer program, code or set of instructions, commonly known as a "computer virus," that is not designed to be a part of the System and that, when inserted into the computer’s memory: (i) duplicates all or part of itself without specific user instructions to do so, or (ii) erases, alters or renders unusable any Data or the System, with or without specific user instructions to do so, or (iii) that provide unauthorized access to the System;

(g) The System is free of any spyware and malware;

(h) The System and the Equipment shall be fully warranted for repair or replacement during the term of this Contract as amended or extended.

(h) The System shall:

(i) Accurately recognize and process all time and date Data including, but not limited to, daylight savings time and leap year Data, and

(ii) Use accurate same-century, multi-century, and similar date value formulas in its calculations, and use date Data interface values that accurately reflect the correct time, date and century.

1. All components of the System are dedicated for the City’s Use only and not shared by the Contractor with any third party.
2. All Data and Work Products shall be and remain the sole and exclusive property of the City. Contractor shall treat all Data as confidential information. Contractor will be provided access to the Data for the sole and exclusive purpose of performing its obligations under this Contract. Contractor is prohibited from disclosing any Data to any third party without specific written approval from the City. Contractor will have no property interest in and may assert no lien on or right to withhold Data or Work Product from the City.
3. The System, the City’s access to the System, the City’s Use of the System or the Documentation, and the Contractor’s performance of this Contract do not and will not conflict with, infringe upon or violate, the intellectual property rights of any other person or legal entity.
4. The System, the City’s access to the System, the City’s Use of the System or the Documentation, and the Contractor’s performance of this Contract are not alleged by any person to conflict with, infringe upon or violate, the intellectual property rights of any other person or legal entity.
5. There are no existing or threatened legal proceedings brought against the Contractor in respect of the System, the Documentation, or the Contractor’s right to grant others the right to access and use the System, including the underlying \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ or the Documentation. Should the Contractor become aware of any such conflict, infringement or violation or potential conflict, infringement or violation, the Contractor will notify the City immediately.
6. The Documentation is complete and will allow the City to access and use the System.
7. The Contractor will meet the following Data-related system requirements:
8. At all times, the City shall be able to receive Data, associated metadata, and reasonably granular subsets thereof, as well as any associated files or attachments, from the System in a useable, encrypted format.
9. At all times, the City shall be able to access any Data in a machine-readable format.
10. At all times, the System must allow the City to push Data as needed to update the Data.
11. The Contractor shall not enforce or implement any restriction on the City’s access or use of the Data.

1. Upon termination of this Contract and at the City’s written request, the Contractor shall destroy all Data, including back-ups and copies thereof, according to the National Institute of Standards and System 800-53 (NIST) standards or as otherwise directed by the City.
2. Contractor has and shall have the ability to retain Data in a manner that is searchable and capable of compliance with records retention laws and best practices.
3. At no time may Contractor suspend or terminate City’s access to any Data or the System for breach of contract without giving the City reasonable notice and opportunity to cure.
4. Contractor shall make available full documentation of APIs (including field names and objects) and the database schema used by the application, at any time upon request by the City. Access to any Data via APIs in a machine- readable format. Acceptable machine- readable formats are: JSON, CSV, XML.
5. AI requirements: The Contractor represents that it will meet the following AI System requirements:
6. The Contractor shall demonstrate that any AI System and its usage, deployment, and maintenance as it pertains to the System (or Services) do not conflict with the AI Policy and Principles therein.
7. The Contractor represents that the AI System is suitable for its intended use by the City and has been developed and will perform in a manner that is in compliance with all applicable laws and regulations.
8. The Contractor has evaluated the AI System and will take or has taken affirmative steps to minimize Risks posed by the AI System.
9. The Contractor represents that the AI Factsheet accurately represents the AI System. The Contractor commits to update the AI Factsheet on an annual basis and within 30 calendar days of any substantive change to the AI system. Any substantive changes made to the AI Factsheet and not reflected in an update the AI Fact Sheet may be cause for termination by the City, if it is determined at the City’s sole discretion that the revised information renders the AI System unserviceable to the City.
10. **Performance:** The Contractor will provide the City with the means to monitor the performance, including the accuracy, of the AI System it uses and provide routine accuracy reports. These reports may include, but are not limited to, the false positive rate, the false negative rate, the true positive rate, the average percentage error, the mean-squared error, and human judgement scores.
11. **Algorithmic bias:** TheContractor will provide the City with evidence that demonstrates that any unlawful bias present in the AI System is effectively managed for the context in which it will be deployed. The Contractor shall provide information describing in detail how bias is assessed.
12. **Human oversight:** TheContractor will provide the City the means for a human to evaluate and override functions and outputs of the AI System. The human evaluator must be able to override the functions and outputs of the AI System.
13. **Explainability:** TheContractor will provide the City with an explanation of how the AI System generates outputs, including what factors influence the system’s decisions, rule-based logic, training data sources, and probability-based decisions.
14. **Notice:** TheContractor will provide written notice of the usage of the AI System to Data subjects and/or end-users, preferably at the point of service.
15. **Process:** TheContractor will comply with existing local, state, and federal law for Data access and decision appeals related to the use or operation of the AI System.
16. **Ongoing Monitoring:** TheContractor will regularly monitor the performance of the AI System to detect and rectify system behavior that violates any of the requirements in this section. TheContractor will promptly notify the City of any AI System behavior that violates any of the requirements in this section, including the potential impact on the System.
17. **Model Training:** The Contractor agrees that it will not use Data, directly or indirectly, for the training, development, testing or improvement of any AI models or machine learning algorithms. The City reserves the right to immediately terminate this Contract without notice and pursue any legal remedies available under applicable law for the Contractor’s failure to comply with the requirements of this section.
18. **User Training:** The Contractor agrees that it will ensure that appropriate training is available to City staff who may operate the AI System, which may include how to:
	* + Protect sensitive or personal information;
		+ Mitigate harmful algorithmic bias;
		+ Promote optimal performance;
		+ Report system errors; and
		+ Maintain service delivery if the AI System fails, to the extent possible.

**(ix) Auditing:** The City retains the right to observe or audit any relevant work processes, services, or documents in the course of doing business with the City to confirm that the Contractor (and any relevant sub-contractors) is complying with this Section 3.02(p). The Contractor shall provide access to information, documentation, and personnel required to complete this audit at no additional cost to the City.

# Article 4. Contract Effective Date and Time of Performance

4.01 This Contract shall be approved by the required City departments, approved by the City Council, and signed by the City’s Chief Procurement Officer. The effective date of this Contract shall be the date upon which the Contract has been approved by resolution of the City Council.

4.02 Prior to the approvals set forth in Section 4.01, the Contractor shall have no authority to begin work on this Contract. The Chief Financial Officer shall not authorize any payments to the Contractor, nor shall the City incur any liability to pay for the System or to reimburse the Contractor for any expenditure, prior to such award and approvals.

4.03 The City and the Contractor agree that the commencement and duration of the Contractor's performance under this Contract shall be determined as set forth in Exhibit A.

4.04 The City and the Contractor agree that the City shall have the right to extend the term of this Contract on the terms and conditions contained herein, as set forth in more detail on Exhibit A.

# Article 5. Records, Work Products and Data

5.01 Copies of all Records and Work Products as are existing, available, and deemed necessary by the City for the performance of the System, the Equipment and the Services and this Contract shall be furnished to the City upon the City’s request.

5.02 The City may retrieve Data from the System at any time and, within ten (10) days of the City’s request, the Contractor will make available any Data that is stored in native file format (Word, Excel, PowerPoint, PDF, MP4). The Contractor shall not access, use, disclose, sell, rent, transfer or copy the Data for any purpose (or authorize or permit a third party to perform such acts) other than as required to perform the Contractor’s obligations pursuant to this Contract. During the term of this Contract, the Contractor is permitted access to the Data for the sole and exclusive purpose of performing its obligations under this Contract, including limited non-exclusive, non-transferable permission to transmit, process, and display the Data only to the extent necessary in the providing the System and any of the services in connection with the delivery and operation of the System and not for the storage or recording of the Data. The Contractor is prohibited from using, transferring or disclosing any of the Data without specific written approval from the City. The Contractor hereby acknowledges that it has no will and never have any property interest in and may assert no lien on or right to withhold Data from the City.

**Article 6. Contractor Personnel and Contract Administration**

6.01 The Contractor represents that, at its own expense, it has obtained or will obtain all personnel and equipment required to provide the System, the Equipment and the Services. It warrants that all such personnel are qualified and possess the requisite licenses or other such legal qualifications to perform the activities necessary for the Contractor to deliver the System, the Equipment and the Services and for the System to function as described on Exhibit A. If requested, the Contractor shall supply a résumé of the managerial staff or consultants it proposes to assign to this Contract, as well as a dossier on the Contractor's professional activities and major undertakings.

6.02 The City may interview the Contractor's managerial staff and other employees assigned to this Contract. The Contractor shall not use any managerial staff or other employees to whom the City objects and shall replace in an expedient manner those rejected by the City. The Contractor shall not replace any of the personnel working on this Contract with new personnel without the prior written consent of the City.

6.03 When the City deems it reasonable to do so, it may assign qualified City employees or others to work with the Contractor to complete the System. Nevertheless, it is expressly understood and agreed by the parties that the Contractor shall remain ultimately responsible for the proper completion of the System.

6.04 The relationship of the Contractor to the City is and shall continue to be that of an independent contractor and no liability or benefits, such as workers' compensation, pension rights or liabilities, insurance rights or liabilities, or other rights or liabilities arising out of or related to a contract for hire or employer/employee relationship shall arise or accrue to either party or either party's agent, Subcontractor or employee as a result of the performance of this Contract. No relationship other than that of independent contractor shall be implied between the parties or between either party’s agents, employees or Subcontractors. The Contractor agrees to indemnify, defend, and hold the City harmless against any claim based in whole or in part on an allegation that the Contractor or any of its Associates qualify as employees of the City, and any related costs or expenses, including but not limited to legal fees and defense costs.

6.05 The Contractor warrants and represents that all persons assigned to the performance of this Contract shall be regular employees or independent contractors of the Contractor, unless otherwise authorized by the City. The Contractor’s employees’ daily working hours while working in or about a City of Detroit facility shall be the same as those worked by City employees working in the facility, unless otherwise directed by the City.

6.06 The Contractor shall comply with and shall require its Associates to comply with all security regulations and procedures in effect on the City’s premises.

# Article 7. Compensation and Security

7.01 Compensation for System, the Equipment and the Services provided shall be in the amounts and will be paid in the manner set forth in Exhibit B. Unless this Contract is amended pursuant to Article 18, the amount described on Exhibit B shall be the entire compensation to which the Contractor is entitled for the System under this Contract.

7.02 Payment for System, the Equipment and the Services provided under this Contract is also governed by the terms of Ordinance No. 42-98, entitled "Prompt Payment of Vendors," being Sections 17-5-281 through 17-5-288 of the 2019 Detroit City Code.

The City employee responsible for accepting performance and payment requests under this Contract is:

# Article 8. Maintenance and Audit of Records

8.01 The Contractor shall maintain full and complete Records reflecting all of its operations related to this Contract. The Records shall be kept in accordance with generally accepted accounting principles and maintained for a minimum of three (3) years after the Contract completion date.

8.02 The City and any government-grantor agency providing funding under this Contract shall have the right at any time with 10 days’ notice to examine and audit all Records and other supporting data of the Contractor as the City or any agency deems necessary.

(a) The Contractor shall make all Records available for examination during normal business hours at its Detroit offices, if any, or alternatively at its facility nearest Detroit. The City and any government-grantor agency providing funds for the Contract shall have this right of inspection. The Contractor shall provide copies of all Records to the City or to any such government-grantor agency upon request.

(b) If in the course of such inspection the representative of the City or of another government-grantor agency should note any deficiencies in the performance of the Contractor's agreed upon performance or record-keeping practices, such deficiencies will be reported to the Contractor in writing. The Contractor agrees to promptly remedy and correct any such reported deficiencies within ten (10) days of notification.

(c) Any costs disallowed as a result of an audit of the Records shall be repaid to the City by the Contractor within thirty (30) days of notification or may be set off by the City against any funds due and owing the Contractor, provided, however, that the Contractor shall remain liable for any disallowed costs exceeding the amount of the setoff.

(d) Each party shall pay its own audit costs. However, if the dollar amount of the total disallowed costs, if any, exceeds three percent (3%) of the dollar amount of this Contract, the Contractor shall pay the City's audit costs.

(e) Nothing contained in this Contract shall be construed or permitted to operate as any restriction upon the powers granted to the Auditor General by the City Charter, including but not limited to the powers to audit all accounts chargeable against the City and to settle disputed claims.

8.03 The Contractor agrees to include the covenants contained in Sections 8.01 and 8.02 in any contract it has with any Subcontractor, consultant or agent who will be charged directly or indirectly to the City for anything related to the System.

# Article 9. Indemnity

9.01 The Contractor agrees to indemnify, defend, and hold the City harmless against and from any and all liabilities, obligations, damages, penalties, claims, costs, charges, losses and expenses (including, without limitation, fees and expenses for attorneys, expert witnesses and other consultants) that may be imposed upon, incurred by, or asserted against the City or its departments, officers, employees, or agents by reason of any of the following occurring during the term of this Contract:

(a) Any claim for negligent or tortious act, error, or omission attributable in whole or in part to the Contractor or any of its Associates;

(b) Any failure by the Contractor or any of its Associates to perform their obligations, either express or implied, under this Contract;

(c) Any claim for infringement of any patent, copyright, trademark, trade secret, license agreement or any other proprietary rights arising from the City’s Use of the System, the AI System or Work Product.

(d) Any breach of any of the warranties and representations made by the Contractor in Article 3 of this Contract.

 (e) Any and all injury to the person or property of an employee of the City where such injury arises out of the Contractor’s or any of its Associates performance of this Contract, including, but not limited to any malfunction or lack of function of the System.

 (f) Any Claim which arise out of, relate to or result from any act or omission of the Contractor related to the provision of the AI System.

9.02 The Contractor undertakes and assumes all risk of dangerous conditions when not performing inside City offices. The Contractor also agrees to waive and release any claim or liability against the City for personal injury or property damage sustained by it or its Associates while performing under this Contract on premises that are not owned by the City.

9.03 In the event any action shall be brought against the City by reason of any claim covered under this Article 9, the Contractor, upon notice from the City, shall at its sole cost and expense defend the same.

9.04 The Contractor agrees that it is the Contractor's responsibility and not the responsibility of the City to safeguard the property that the Contractor or its Associates use while performing this Contract. Further, the Contractor agrees to hold the City harmless for any loss of such Contract.

9.05 The indemnification obligation under this Article 9 shall not be limited by any limitation on the amount or type of damages, compensation, or benefits payable under workers' compensation acts, other employee benefit acts, or any insurance policies listed in Article 10.

9.06 The Contractor agrees that this Article 9 shall apply to all claims, whether litigated or not, that may occur or arise between the Contractor or its Associates and the City and agrees to indemnify, defend and hold the City harmless against any such claims.

# Article 10. Insurance

* 1. During the term of this Contract, the Contractor shall maintain the following insurance, at a minimum and at its expense:

(a). General liability insuranceinsuring the Contractor’s obligations and responsibilities with respect to the performance of System as set out in this Contract.The policy will be extended to include bodily injury and property damage, products and completed operations, personal and advertising injury, Implementation System, contingent employer’s liability, and contractual liability to a limit of no less than two million dollars ($2,000,000) per occurrence. The policy will include a cross liability and severability of interest clause and be endorsed to name the City as an additional insured;

(b) Non-owned automobile insuranceto a limit of no less than one million dollars ($1,000,000);

(c) If applicable, automobile insurance (OAP1) for both owned and leased vehicles with inclusive limits of no less than one million dollars ($1,000,000); and

(d) Errors and omissions cyber liability insurance insuring the Contractor to a limit of no less than one million dollars ($1,000,000) per claim and five million dollars ($5,000,000) in the aggregate. The coverage under the policy will be maintained continuously during the Term of this Contract and for an additional two (2) years after the termination or expiration of this Contract and will cover insurable losses arising out of or in association with an error or omission in the rendering of or failure to complete and provide the System as set out in this Contract. Coverage under the policy will respond to, but not be limited to the following occurrences:

1. Privacy breach and violations as a result of but not limited to unauthorized access to or wrongful disclosure or dissemination of private information, failure to properly handle, manage, store, destroy or control personal information and include the failure to comply with privacy laws and their respective regulations regarding the collection, access, transmission, use, and accuracy.  Coverage will extend to include the costs associated with notification of affected parties, regardless if required by statute as well as any fines or penalties or costs imposed as a result of the breach including defense of any regulatory action involving a breach of privacy;
2. Network security incidents arising from System security failures such as, but not limited to, unauthorized access, theft or destruction of Data, electronic security breaches, denial of service, spread of virus within the Contractor’s computer network, the System or other third-party computer information systems and will further include expenses related to third party computer forensics;
3. Privacy breach expenses including crisis management related to electronic and non-electronic breaches;
4. Content or media liability including personal and advertising liability, intellectual property infringement coverage (copyright, trademark, trade name, service mark, trade dress or trade secret) arising out of media content created, produced or disseminated by the Contractor;
5. Coverage for delay in performance of a contract or agreement, including this Contract, resulting from an error or omission; and
6. Coverage for damages resulting from dishonest and criminal acts committed by an employee of the Contractor.

(e) If coverage is to be cancelled or non-renewed for any reason, the Contractor shall provide the City with thirty (30) day notice of said cancellation or non-renewal.  The City may request an Extended Reporting Endorsement be purchased by the Contractor at the Contractor’s expense.  The term of the Extended Reporting Endorsement will be decided by the City and the Contractor.

(f) The Contractor shall ensure that all policies of insurance will:

1. be written with an insurer properly licensed to do business;
2. contain an undertaking by the insurers to notify the City in writing no less than thirty (30) days prior to any termination or cancellation of coverage unless otherwise required by law; and
3. be non-contributing with and will apply only as primary and not excess to any other insurance or self-insurance available to the City.

(g) The Contractor shall be responsible for payment of all deductibles contained in any insurance required under this Contract.

1. the Contractor shall deliver to the City certificates of insurance evidencing renewal or replacement of policies required under this Contract at least fifteen (15) days prior to the expiration or replacement of the current policies without demand by the City.
2. If the Contractor fails to maintain in force any insurance required to be maintained by it hereunder, then the City, without prejudice to any of its other remedies, may obtain such insurance on behalf of and at the cost of the Contractor.
3. The Contractor and its Associates and insurer(s) hereby release the City from any and all liability or responsibility, including anyone claiming through or under them, by way of subrogation or otherwise for any loss or damage which the Contractor may sustain incidental to or in any way related to the Contractor’s obligations under this Contract.

10.03 Each such policy shall contain the following cross-liability wording: “In the event of a claim being made hereunder by one insured for which another insured is or may be liable, then this policy shall cover such insured against whom a claim is or may be made in the same manner as if separate policies had been issued to each insured hereunder.”

10.04 All insurance required by this Contract shall be written on an occurrence-based policy form, if the same is commercially available.

10.05 The Commercial General Liability policy shall be endorsed to have the general aggregate apply to the System provided under this Contract only.

10.06 If during the term of this Contract changed conditions or other pertinent factors should, in the reasonable judgment of the City, render inadequate the insurance limits, the Contractor shall furnish on demand such additional coverage or types of coverage as may reasonably be required under the circumstances. All such insurance shall be affected at the Contractor's expense, under valid and enforceable policies issued by insurers licensed to conduct business in Michigan and are otherwise acceptable to the City.

10.07 All insurance policies shall name the Contractor as the insured and the City as an additional insured. Certificates of insurance evidencing the coverage required by this Article 10 shall, in a form acceptable to the City, be submitted to the City prior to the commencement of the System and at least fifteen (15) days prior to the expiration dates of expiring policies. In the event the Contractor receives notice of policy cancellation, the Contractor shall immediately notify the City in writing.

10.08 If part of this Contract is subcontracted, the Contractor shall require each Subcontractor to effect and maintain the types and limits of insurance set forth in this Article 10 and shall require documentation of same, copies of which documentation shall be promptly furnished the City.

10.09 The provisions requiring the Contractor to carry the insurance required under this Article 10 shall not be construed in any manner as waiving or restricting the liability of the Contractor under this Contract.

# Article 11. Default and Termination

11.01 This Contract shall remain in full force and effect until the end of its term unless otherwise terminated for cause or convenience according to the provisions of this Article 11.

11.02 The City reserves the right to terminate this Contract for cause. Cause is an event of default.

(a) An event of default shall occur if there is a material breach of this Contract, and shall include the following:

(i) The Contractor fails to begin work in accordance with the terms of this Contract;

(ii) The Contractor, in the judgment of the City, is unnecessarily, unreasonably, or willfully delaying the performance and completion of the System;

(iii) The Contractor ceases to perform under the Contract;

(iv) The City is of the opinion that the System cannot be completed within the time provided in the “Project Plan” set forth on Exhibit A, and that the delay is attributable to conditions within the Contractor's control;

(v) The Contractor, without just cause, reduces its work force on this Contract to a number that would be insufficient, in the judgment of the City, to complete the System within a reasonable time, and the Contractor fails to sufficiently increase such work force when directed to do so by the City;

(vi) The Contractor assigns, transfers, conveys or otherwise disposes of this Contract in whole or in part without prior approval of the City;

(vii) Any City officer or employee acquires an interest in this Contract so as to create a conflict of interest;

(viii) The Contractor violates any of the provisions of this Contract, or disregards applicable laws, ordinances, permits, licenses, instructions or orders of the City;

(ix) The performance of the Contract, in the sole judgment of the City, is substandard, unprofessional, or faulty and not adequate to the demands of the task to be performed;

(x) The performance or function of the System, in the sole judgment of the City is substandard, faulty or not adequate;

(xi) Contractor fails in or violates any of the agreements or covenants set forth in this Contract, or any of the warranties or representations listed in Article 3 are found to be untrue or are violated;

(xii) The Contractor ceases to conduct business in the normal course; or

(xiv) The Contractor admits its inability to pay its debts generally as they become due.

(b) If the City finds an event of default has occurred, the City may issue a Notice of Termination for Cause setting forth the grounds for terminating the Contract. Upon receiving a Notice of Termination for Cause, the Contractor shall have ten (10) business days within which to cure such default. If the default is cured within said ten (10) business day period, the right of termination for such default shall cease. If the default is not cured to the satisfaction of the City, this Contract shall terminate on the tenth calendar day after the Contractor's receipt of the Notice of Termination for Cause, unless the City, in writing, gives the Contractor additional time to cure the default. If the default is not cured to the satisfaction of the City within the additional time allowed for cure, this Contract shall terminate for cause at the end of the extended cure period. The City shall have no obligation to pay Contractor for any of its System performed during an extended cure period.

(c) If, after issuing a Notice of Termination for Cause, the City determines that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the Notice of Termination had been issued as a Notice of Termination for Convenience.

(d) The Contractor shall be liable to the City for any damages it sustains by virtue of the Contractor's breach or any reasonable costs the City might incur in enforcing or attempting to enforce this Contract. Such costs shall include reasonable fees and expenses for attorneys, expert witnesses and other consultants. However, if the Contractor makes a written offer prior to the initiation of litigation or arbitration, then the City shall not be entitled to such attorney fees unless the City declines the offer and obtains a verdict or judgment for an amount more than ten percent (10%) above the amount of the Contractor's last written offer prior to the initiation of litigation or arbitration. The City may withhold any payment(s) to the Contractor, in an amount not to exceed the amount claimed in good faith by the City to represent its damages, for the purpose of setoff until such time as the exact amount of damages due to the City from the Contractor is determined. It is expressly understood that the Contractor shall remain liable for any damages the City sustains in excess of any setoff.

(e) The City's remedies outlined in this Article 11 shall be in addition to any and all other legal or equitable remedies permissible.

* 1. If the Contractor is adjudicated bankrupt or insolvent, or if a trustee is appointed over the Contractor or any of its property, whether it is a third party or Contractor as debtor-in-possession (referred to as “Contractor’ in this Article unless the context clearly requires otherwise) the following rights, obligations and limitations control:
1. Contractor or any trustee must not assign any or all of its rights, title or interest, in or this Contract, as this Contract is for the delivery of the System, as to which the City is entitled to insist upon performance solely by the Contractor.
2. Contractor or any trustee may only assume this Contract if it provides adequate assurance of future performance. Adequate assurance of future performance means proof reasonably satisfactory to the City of:
	1. Adequate financial capacity to employ or contract with sufficient personnel to perform the System assigned to the Contractor as provided in this Contract, and to pay for all System contracted for by the Contractor;
	2. Adequate financial capacity to own, operate, lease or obtain sufficient facilities and supplies to perform the System assigned to the Contractor as provided for in this Contract; and
	3. Adequate financial and professional capacity to maintain the professional standard provided in this Contract. The reasonable determination of the City as to the adequate professional capacity of the Contractor is determinative.
3. Because of the unique nature of the System this Contract requires the Contractor to provide, the Contractor agrees that any requests by the City that the trustee or the Contractor as debtor-in-possession assume or reject this Contract in a shorter time than provided for in 11 U.S.C. §365 is reasonable so long as the trustee or Contractor receives no less than 5 business days’ notice.
4. If this Contract is terminated during bankruptcy proceedings or if the trustee or debtor-in-possession successfully and properly obtains a court order rejecting this Contract, the Contractor as debtor-in-possession or its trustee must cooperate with the City in arranging for the orderly transfer of responsibilities to persons or entities as the City may designate. The termination is not effective until the orderly transfer of responsibilities, consistent with sound professional practices, has been completed.
	1. Although neither party has the right to terminate the Contract merely because the other is adjudicated bankrupt or insolvent or a trustee or a debtor-in-possession is appointed over any parties’ property, each party retains all of the other termination rights set forth elsewhere in this Contract during the period of any proceedings under the Bankruptcy Code of the United States.
	2. The Contractor must immediately inform the City of material changes in its operation, ownership or financial condition. Material changes include, but are not limited to:
5. Reduction or change in staffing assigned to the Contract.
6. Decrease in, or cancellation of, insurance coverage.
7. Delinquent payment, or nonpayment, of tax obligations.
8. Delinquent payment, or nonpayment, of payroll obligations.
9. Delinquent funding, or non-funding, of pension or profit-sharing plans.
10. Delinquent payment, or nonpayment, of subcontractors.
11. Termination of, or changes, in subcontracts.
12. Transfer, sell, assignment or delegation to an entity other than the Contractor, of ownership or administrative System.
	1. The City shall have the right to terminate this Contract at any time at its convenience by giving the Contractor five (5) business days written Notice of Termination for Convenience. As of the effective date of the termination, the City will be obligated to pay the Contractor the following: (a) the fees or commissions for System completed and accepted in accordance with Exhibit A in the amounts provided for in Exhibit B; and (b) the Contractor's costs and expenses incurred prior to the date of the termination for items that are identified in Exhibit B, if any. The amount due to the Contractor shall be reduced by payments already paid to the Contractor by the City. In no event shall the City pay the Contractor more than maximum price, if one is stated, of this Contract.
	2. After receiving a Notice of Termination for Cause or Convenience, and except as otherwise directed by the City, the Contractor shall:

(a) Stop work under the Contract on the date and to the extent specified in the Notice of Termination;

(b) Obligate no additional Contract funds for payroll costs and other costs beyond such date as the City shall specify, and place no further orders on subcontracts for material, the System, or facilities, except as may be necessary for completion of such portion of the System under this Contract as is not terminated;

(c) Terminate all orders and subcontracts to the extent that they relate to the portion of the System terminated pursuant to the Notice of Termination;

(d) Preserve all Records, Work Products and submit to the City such Records and Work Products as the City shall specify, and furnish to the City an inventory of all furnishings, equipment, and other property purchased for the Contract, if any, and carry out such directives as the City may issue concerning the safeguarding or disposition of files and property; and

1. Submit within thirty (30) days a final report of receipts and expenditures of funds relating to this Contract, and a list of all creditors, Subcontractors, lessors and other parties, if any, to whom the Contractor has become financially obligated pursuant to this Contract.
	1. After termination of the Contract, each party shall have the duty to assist the other party in the orderly termination of this Contract and the transfer of all rights and duties arising under the Contract, as may be necessary for the orderly, un-disrupted continuation of the business of each party.
	2. Termination of AI System. At the City’s request, the Contractor will immediately discontinue the use of any AI System. If the City, in its sole discretion, determines that the AI system is in violation of one or more of the requirements enumerated in Subsection 3.02(p): Requirements for Contractors when operating AI System(s), or that the Contractor does not promptly resolve an AI Incident, or that the AI System does not adequately support the City’s commitment to the AI Policy and Principles, then the City will provide the Contractor with notice that they have 30 calendar days to promptly assess and resolve the issue. Potential methods to address such issues include, without limitation, changing the behavior of the AI System; supplementing the AI System to achieve the necessary outcomes; replacing the system with a non-AI system that meets the City’s] needs; or limiting the function of the AI System or subsystem. After 30 calendar days, the Contractor must provide evidence that the AI System is adequately fixed and ready for re-deployment, or that the AI System is not suitable for use.

# Article 12. Assignment

 The Contractor shall not assign, transfer, convey or otherwise dispose of any interest whatsoever in this Contract without the prior written consent of the City; however, claims for money due or to become due to the Contractor may be assigned to a financial institution without such approval. Notice of any assignment to a financial institution or transfer of such claims of money due or to become due shall be furnished promptly to the City. If the Contractor assigns all or any part of any monies due or to become due under this Contract, the instrument of assignment shall contain a clause stating that the right of the assignee to any monies due or to become due shall be subject to prior liens of all persons, firms, and corporations for the System as delivered or materials supplied for the performance of the System.

# Article 13. Subcontracting

13.01 The City reserves the right to withhold approval of subcontracting such portions of the System where the City determines that such subcontracting is not in the City's best interests.

13.02 Each subcontract entered into shall provide that the provisions of this Contract shall apply to the Subcontractor and its Associates in all respects. The Contractor agrees to bind each Subcontractor and each Subcontractor shall agree to be bound by the terms of the Contract insofar as applicable to the work or the portions of the System worked on by that Subcontractor.

13.03 The Contractor and the Subcontractor jointly and severally agree that no approval by the City of any proposed Subcontractor, nor any subcontract, nor anything in the Contract, shall create or be deemed to create any rights in favor of a Subcontractor and against the City, nor shall it be deemed or construed to impose upon the City any obligation, liability or duty to a Subcontractor, or to create any contractual relation whatsoever between a Subcontractor and the City.

13.04 The provisions contained in this Article 13 shall apply to subcontracting by a Subcontractor of any portion of the work related to the System included in an approved subcontract.

13.05 The Contractor agrees to indemnify, defend, and hold the City harmless against any claims initiated against the City pursuant to any subcontracts the Contractor enters into in performance of this Contract. The City's approval of any Subcontractor shall not relieve the Contractor of any of its responsibilities, duties and liabilities under this Contract. The Contractor shall be solely responsible to the City for the acts or defaults of its Subcontractors and of each Subcontractor's Associates, each of whom shall for this purpose be deemed to be the agent or employee of the Contractor.

# Article 14. Conflict of Interest

14.01 The Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the delivery of the System or otherwise in connection with its performance of this Contract. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed by the Contractor.

14.02 The Contractor further covenants that no officer, agent, or employee of the City and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or performance of this Contract has any personal or financial interest, direct or indirect, in this Contract or in its proceeds, whether such interest arises by way of a corporate entity, partnership, or otherwise.

14.03 The Contractor warrants (a) that it has not employed and will not employ any person to solicit or secure this Contract upon any agreement or arrangement for payment of a commission, percentage, brokerage fee, or contingent fee, other than bona fide employees working solely for the Contractor either directly or indirectly, and (b) that if this warranty is breached, the City may, at its option, terminate this Contract without penalty, liability or obligation, or may, at its option, deduct from any amounts owed to the Contractor under this Contract any portion of any such commission, percentage, brokerage, or contingent fee.

14.04 The Contractor covenants not to employ an employee of the City for a period of one (1) year after the date of termination of this Contract without written City approval.

14.05 The Contractor shall provide a statement listing all political contributions and expenditures (“Statement of Political Contributions and Expenditures”), as defined by the Michigan Campaign Finance Act, MCL 169.201, et seq., made by the Contractor, its affiliates, subsidiaries, principals, officers, owners, directors, agents or assigns, to elective City officials within the previous four (4) years. Individuals shall also list any contributions or expenditures from their spouses.

14.06 The Contractor’s Statement of Political Contributions and Expenditures shall be attached to this Contract as “Exhibit C” and made a part hereof. **This Contract is not valid unless and until the Statement of Political Contributions and Expenditures is provided.**

14.07 The Statement of Political Contributions and Expenditures shall be filed by the Contractor on an annual basis for the duration of the Contract, shall be current up to and including the date of its filing, and shall also be filed with all contract renewals and change orders, if any.

# Article 15. Confidential Information

15.01 In order that the Contractor may effectively fulfill its covenants and obligations under this Contract, it may be necessary or desirable for the City to disclose confidential and proprietary information, including the Data, to the Contractor or its Associates pertaining to the City's past, present and future activities. Since it is difficult to separate confidential and proprietary information from that which is not, the Contractor shall regard, and shall instruct its Associates to regard, all information, including, but to limited to the Data, gained as confidential and such information shall not be disclosed to any organization or individual without the prior written consent of the City. The above obligation shall not apply to information already in the public domain or information required to be disclosed by a court order.

15.02 The Contractor agrees to take appropriate action with respect to its Associates to ensure that the foregoing obligations of non-use and non-disclosure of confidential information shall be fully satisfied.

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# Article 16. Compliance with Laws

16.01 The Contractor shall comply with and shall require its Associates to comply with all applicable federal, state and local laws.

16.02 The Contractor shall hold the City harmless with respect to any damages arising from any violation of law by it or its Associates. The Contractor shall commit no trespass on any public or private property in the performance of this Contract. The Contractor shall require as part of any subcontract that the Subcontractor comply with all applicable laws and regulations.

# Article 17. Office of Inspector General

17.01 In accordance with Section 2-106.6 of the City Charter, this Contract shall be voidable or rescindable at the discretion of the Mayor or Inspector General at any time if a Public Servant who is a party to the Contract has an interest in the Contract and fails to disclose such interest.

17.02 This Contract shall also be voidable or rescindable if a lobbyist or employee of the contracting party offers a prohibited gift, gratuity, honoraria or payment to a Public Servant in relation to the Contract.

17.03 A fine shall be assessed to the Contractor in the event of a violation of Section 2-106.6 of the City Charter. If applicable, the actions of the Contractor, and its representative lobbyist or employee, shall be referred to the appropriate prosecuting authorities.

17.04 Pursuant to Section 7.5-306 of the City Charter, the Inspector General shall investigate any Public Servant, City agency, program or official act, contractor and subcontractor providing goods and System to the City, business entity seeking contracts or certification of eligibility for City contracts and person seeking certification of eligibility for participation in any City program, either in response to a complaint or on the Inspector General’s own initiative in order to detect and prevent waste, abuse, fraud and corruption.

17.05 In accordance with Section 7.5-310 of the City Charter, it shall be the duty of every Public Servant, contractor, subcontractor, and licensee of the City, and every applicant for certification of eligibility for a City contract or program, to cooperate with the Inspector General in any investigation pursuant to Article 7.5, Chapter 3 of the City Charter.

17.06 Any Public Servant who willfully and without justification or excuse obstructs an investigation of the Inspector General by withholding documents or testimony, is subject to forfeiture of office, discipline, debarment or any other applicable penalty.

17.07 As set forth in Section 7.5-308 of the City Charter, the Inspector General has a duty to report illegal acts. If the Inspector General has probable cause to believe that any Public Servant or any person doing or seeking to do business with the City has committed or is committing an illegal act, then the Inspector General shall promptly refer the matter to the appropriate prosecuting authorities.

17.08 In accordance with Section 17-5-351(a) of the Detroit City Code, the City shall solicit offers from, award contracts to, consent to subcontracts with, or otherwise to conduct business with, responsible contractors only. To effectuate this policy, the debarment of contractors and subcontractors from current and/or future City work may be undertaken.

17.09 Therefore, it will be the responsibility of all the Contractor to check the list of debarred contractors in the City’s website and confirm that neither the Contractor nor the subcontracting company is listed on the City’s debarment list and they will not be using the debarred (sub)contractor(s) to conduct any City business.

17.10 In accordance with Section 17-5-352(c) of the Detroit City Code, the Contractor shall report to the Office of Inspector General any improper, unethical or illegal activity or requests made by elected officers of the City, including those acting on their behalf, or any Public Servant in connection with this Contract.

# Article 18. Amendments

18.01 The City may consider it in its best interest to change, modify or extend a covenant, term or condition of this Contract or require the Contractor to modify the System in any manner not described in Exhibit A. Any such change, addition, deletion, extension or modification of System may require that the compensation paid to the Contractor by the City be proportionately adjusted, either increased or decreased, to reflect such modification. If the City and the Contractor mutually agree to any changes or modification of the System or this Contract, the modification shall be incorporated into this Contract by written Amendment.

18.02 Compensation shall not be modified unless there is a corresponding modification in the System sufficient to justify such an adjustment. If there is any dispute as to compensation, the Contractor shall continue to perform under this Contract until the dispute is resolved.

18.03 No Amendment to this Contract shall be effective and binding upon the parties unless it expressly makes reference to this Contract, is in writing, is signed and acknowledged by duly authorized representatives of both parties, is approved by the appropriate City departments and the City Council and is signed by the Chief Procurement Officer.

18.04 The City shall not be bound by Unauthorized Acts of its employees, agents, or representatives with regard to any dealings with the Contractor and any of its Associates.

# Article 19. Fair Employment Practices

19.01 The Contractor shall comply with, and shall require any Subcontractor to comply with, all federal, state and local laws governing fair employment practices and equal employment opportunities.

19.02 The Contractor agrees that it shall, at the point in time it solicits any subcontract, notify the potential Subcontractor of their joint obligations relative to non-discrimination under this Contract, and shall include the provisions of this Article 18 in any subcontract, as well as provide the City a copy of any subcontract upon request.

19.03 Breach of the terms and conditions of this Article 19 shall constitute a material breach of this Contract and may be governed by the provisions of Article 11, "Default and Termination."

# Article 20. Notices

20.01 All notices, consents, approvals, requests and other communications ("Notices") required or permitted under this Contract shall be given in writing, mailed by postage prepaid, certified or registered first-class mail, return receipt requested, and addressed as follows:

*If to the City on behalf of the City:*

 *If to the Contractor:*

20.02 All Notices shall be deemed given on the day of mailing. Either party to this Contract may change its address for the receipt of Notices at any time by giving notice of the address change to the other party. Any Notice given by a party to this Contract must be signed by an authorized representative of such party.

20.03 The Contractor agrees that service of process at the address and in the manner specified in this Article 20 shall be sufficient to put the Contractor on notice of such action and waives any and all claims relative to such notice.

# Article 21. Force Majeure

No failure or delay in performance of this Contract, by either party, shall be deemed to be a breach thereof when such failure or delay is caused by a force majeure event including, but not limited to, any Act of God, strikes, lockouts, wars, acts of terrorism, riots, epidemics, explosions, sabotage, breakage or accident to equipment, the binding order of any court or governmental authority, or any other cause, whether of the kind herein enumerated or otherwise, not within the control of a party. In the event of a dispute between the parties with regard to what constitutes a force majeure event, the City’s reasonable determination shall be controlling.

# Article 22. Waiver

22.01 The City shall not be deemed to have waived any of its rights under this Contract unless such waiver is in writing and signed by the City.

22.02 No delay or omission on the part of the City in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one (1) occasion shall not be construed as a waiver of any right on any future occasion.

22.03 No failure by the City to insist upon the strict performance of any covenant, agreement, term or condition of this Contract or to exercise any right, term or remedy consequent upon its breach shall constitute a waiver of such covenant, agreement, term, condition, or breach.

# Article 23. Miscellaneous

23.01 If any provision of this Contract or its application to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Contract shall not be affected and shall remain valid and enforceable to the fullest extent permitted by law.

23.02 This Contract contains the entire agreement between the parties and all prior negotiations and agreements are merged into this Contract. Neither the City nor the City's agents have made any representations except those expressly set forth in this Contract, and no rights or remedies are, or shall be, acquired by the Contractor by implication or otherwise unless expressly set forth in this Contract. The Contractor waives any defense it may have to the validity of the execution of this Contract.Notwithstanding any language to the contrary therein, no terms or conditions stated in any Contractor license, user agreement, or any other Contractor contract documentation shall be incorporated into or form any part of this Contract, and all such terms or conditions shall be null and void. In addition, the “General Terms and Conditions” contained in any Purchase Order issued in connection with this Contact shall have no force or effect and shall be null and void.

 23.03 Unless the context otherwise expressly requires, the words "herein," "hereof," and "hereunder," and other words of similar import, refer to this Contract as a whole and not to any particular section or subdivision.

23.04 The headings of the sections of this Contract are for convenience only and shall not be used to construe or interpret the scope or intent of this Contract or in any way affect the same.

23.05 This Contract and all actions arising under it shall be governed by, subject to, and construed according to the law of the State of Michigan. The Contractor agrees, consents and submits to the exclusive personal jurisdiction of any state or federal court of competent jurisdiction in Wayne County, Michigan, for any action arising out of this Contract. The Contractor also agrees that it shall not commence any action against the City because of any matter whatsoever arising out of or relating to the validity, construction, interpretation and enforcement of this Contract in any state, federal or foreign court of competent jurisdiction other than one in Wayne County, Michigan.

23.06 If any Associate of the Contractor shall take any action that, if done by a party, would constitute a breach of this Contract, the same shall be deemed a breach by the Contractor.

23.07 The rights and remedies set forth in this Contract are not exclusive and are in addition to any of the rights or remedies provided by law or equity.

23.08 For purpose of the hold harmless and indemnity provisions contained in this Contract, the term "City" shall be deemed to include the City of Detroit and all other associated, affiliated, allied or subsidiary entities or commissions, now existing or subsequently created, and their officers, agents, representatives, and employees.

23.09 The Contractor covenants that it is not, and shall not become, in arrears to the City upon any contract, debt, or other obligation to the City including, without limitation, real property, personal property and income taxes, and water, sewage or other utility bills.

23.10 This Contract may be executed in any number of original counterparts, any one of which shall be deemed an accurate representation of this Contract. Promptly after the execution of this Contract, the City shall provide a copy to the Contractor.

23.11 As used in this Contract, the singular shall include the plural, the plural shall include the singular, and a reference to either gender shall be applicable to both.

23.12 The rights and benefits under this Contract shall inure to the City of Detroit and its agents, successors, and assigns.

23.13 The City shall have the right to recover by setoff from any payment owed to the Contractor all delinquent withholding, income, corporate and property taxes owed to the City by the Contractor, any amounts owed to the City by the Contractor under this Contract or other contracts, and any other debt owed to the City by the Contractor.

23.14 If this Contract is grant-funded, this Contract is governed by the terms and conditions of the grant agreement.

23.15 Any trademarks and service marks (“Trademarks”) adopted by the Contractor to identify the Documentation and other products and services belonging to the Contractor prior to the effective date of this Contract, shall continue to belong to the Contractor. Nothing herein grants, or shall be construed to grant, to the City any rights to such Trademarks.

**Article 24: Board of Ethics**

24.01 In accordance with Section 2-106.10 of the City Charter, it is the duty of every Public Servant, the Contractor and subcontractors, if any to cooperate with the Board of Ethics in any investigation.

24.02 Any Public Servant who willfully and without justification or excuse obstructs an investigation of the Board of Ethics by withholding documents or testimony is subject to forfeiture of office, discipline, debarment or any other applicable penalty.

24.05 The Contractor acknowledges that it subject to debarment or any other applicable penalty, if the Contractor willfully and without justification or excuse obstructs an investigation of the Board of Ethics by withholding documents or testimony.

(Signatures appear on next page)

 The City and the Contractor, by and through their duly authorized officers and representatives, have executed this Contract as follows:

 CONTRACTOR

 By:

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Its:

 City of Detroit

 By:

 Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Its:

THIS CONTRACT WAS APPROVED APPROVED BY LAW DEPARTMENT

BY THE CITY COUNCIL ON: PURSUANT TO § 7.5-206 OF THE CHARTER OF THE CITY OF DETROIT

 Date

Chief Procurement Officer Date Corporation Counsel Date

THIS CONTRACT IS NOT VALID OR AUTHORIZED UNTIL APPROVED BY RESOLUTION OF THE CITY COUNCIL AND SIGNED BY THE CHIEF PROCUREMENT OFFICER

# Exhibit A – Remote Payment Options System

**A.1. Notice to Proceed**

 The term of this Contract shall begin upon approval by the Detroit City Council, and shall continue for a term of five (5) years, unless the City exercises its option to extend the term, as set forth below. The Contractor shall commence performance of this Contract upon receipt of a written “Notice to Proceed” from the City and in the manner specified in the Notice to Proceed.

 The City shall have the right to extend the term of this contract for \_\_\_\_\_\_\_\_\_ (\_) additional term of \_\_\_\_\_\_\_ (\_) years by providing written notice to Contractor of the City’s election to exercise its option to extend no less than ninety (90) days prior to the expiration of the then-current term.

**A.1.2. System Objectives and General Description**

**THIS SECTION SHOULD INCLUDE AS MUCH OF THE REQUIREMENTS OF THE RFP AS POSSIBLE**

**A.1.3 System Description**

The Contractor will provide the System that, at a minimum, will include the following:

**A.1.4 System Deliverables**

Licensing: **[Please add any licensing terms and conditions as a new article to the body of the contract.]**

**A2. System Overview**

**System Software Requirements;** The System will include the following:

**Hosting and Platform Requirements;** The System will include the following:

**Cloud Solutions.** Additional particulars about the System are as follows:

**Network** The System network will include:

 **Data Extract, Transform, and Load**

**A.3 System Implementation and Project Plan**

**A.4 Services**

**A.5 Equipment**

**A.6 Training**

**A.7 System Service Levels and Support Services**

# Exhibit B – Fee Schedule

**I.** **General**

 (a) The Contractor shall be paid for those the proper functioning System pursuant to this Contract a maximum amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and 00/100 Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_) for the initial term of this Contract as set forth in Exhibit A.

 If the City elects to exercise its extension option of \_\_\_\_\_\_\_\_ (\_) years, the Contractor shall be paid for the proper functioning System pursuant to this Contract a maximum amount of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_), for the extended term of this Contract as set forth in Exhibit A, or as may be mutually agreed to between the parties in a valid Amendment.

 (b) Payment for the proper performance of the Services shall be contingent upon receipt by the City of invoices for payment to the City’s office of procurement payment portal. Each invoice shall certify the total cost, itemizing costs when applicable. Each invoice must be received by the City not more than thirty (30) days after the close of the calendar month in which the services were rendered and must be signed by an authorized officer or designee of the Contractor.

(c) The Fees includes unlimited Data storage during the term of this Contract.

(d) All references to currency are in US Dollars.

**II.**  **Billing** All invoices submitted pursuant to this Contract must include part or item numbers and part or item description, list price, and applicable discount. Items not properly invoiced will not be paid. It is the Contractor’s responsibility to ensure the creation of invoice(s) in Oracle Cloud. Invoices must meet the following conditions for payment:

1. Price on invoice must correspond to the pricing listed on purchase order and/or contract.
2. Contractor must submit price lists in accordance with bid requirements.
3. Contractor must register in the Supplier Portal and be set up for ACH (wireless payment) in order to receive payment.
4. Contractor registration and invoice submission instructions can be found on the City of Detroit’s website at http://www.detroitmi.gov/Supplier. Questions should be directed to procurementinthecloud@detroitmi.gov.

**III. System Fees**

|  |
| --- |
|   |

**Edit as required.**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Item | Unit | Price | Qty | Extended |
| 1. Software/Licensing/Subscription
 |  |  |  |  |
| 1. Cloud Infrastructure Services (Storage, CPU, and Network)
 |  |  |  |  |
| 1. Data/Document Migration
 |  |  |  |  |
| 1. Document Migration
 |  |  |  |  |
| 1. Maintenance/Updates/Support
 |  |  |  |  |
| 1. Hardware
 |  |  |  |  |
| 1. Training
 |  |  |  |  |
| Base Contract Total |  |

|  |  |  |  |
| --- | --- | --- | --- |
| Other Items | Unit | Price | Qty |
| 1. Consultant Fees
 |  |  |  |
| 1. Storage (long term, archive, etc.)
 |  |  |  |
| 1. Additional Expenses
 |  |  |  |

# Exhibit C – Statement of Political Contributions and Expenditures

**“City Charter § 4-122, ¶ 2:** For purposes of conflicts of interest, the City shall require in all of its contractual agreements, including, but not limited to, leases, service and equipment agreements and including contract renewals, that the contractor provide a statement listing all political contributions and expenditures (“**Statement of Political Contributions and Expenditures**”), as defined by the Michigan Campaign Finance Act, MCL 169.201, et seq., made by the contractor, its affiliates, subsidiaries, principals, officers, owners, directors, agents or assigns to elective city officials within the previous four (4) years. Individuals shall also list any contributions or expenditures from their spouses.”

**Instructions: In accordance with Section 4-122 of the 2012 Detroit City Charter, you must provide the following information, sign this document, have it notarized, and submit it to the City. If additional space is needed, please enter “see additional sheet(s)” on the last row and attach additional sheets.**

In Column A, enter the name of the person or company that made the contribution or expenditure. If there were no political contributions or expenditures made, enter NONE.

In Column B, enter the relationship of the donor to the contractor or vendor, that is, contractor, affiliate, subsidiary, principal, officer, owner, director, agent, assignee, or spouse of any of the foregoing who are individuals.

In Column C, enter the name of the recipient, an elective city official which under Charter § 3-107, includes only the Mayor, the City Clerk, and members of the City Council and the Board of Police Commissioners.

In Column D, enter the amount of the contribution or expenditure, as defined in the Michigan Campaign Finance Act, 1976 PA 388, MCL 169.204 and MCL 169.206.

In Column E, enter the date of the contribution or expenditure. This statement must include all contributions and expenditures within the previous four years.

A B C D E

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Donor** | **Relationship to Contractor/Vendor** | **Recipient** | **Amount of Contribution or Expenditure** | **Date** |
|  |  |  |  |  |
|  |  |  |  |  |
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|  |  |  |  |  |

**(EXHIBIT C - continued)**

**STATEMENT OF POLITICAL CONTRIBUTIONS AND EXPENDITURES**

Except as set forth above, I certify that no contributions or expenditures were made to elective city officials within the previous four (4) years by the contractor, its affiliates, subsidiaries, principals, officers, owners, directors, agents, assigns, and, if any of the foregoing are individuals, their spouses.

I understand that the information provided in this disclosure will be relied upon by the City of Detroit in evaluating the proposed bid, solicitation, contract, or lease. I swear [or affirm] that the information provided is accurate. If I am signing on behalf of an entity, I swear [or affirm] that I have the authority to provide this disclosure on behalf of the entity.

Sign name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Sworn and subscribed to before me on\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_\_ [by\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_of the above named contractor/vendor, an authorized representative or agent of the contractor/vendor]

Sign: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Notary Public, \_\_\_\_\_\_\_\_\_\_\_\_\_\_ County, Michigan,

Acting in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ County

My Commission Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_