



# **City of Waco, Texas**

## **Request for Proposal**

**RFP No. 2022-004**

### **Customer Information System (CIS) and Enterprise Asset Management (EAM) System Selection**

**Issue Date: April 13, 2022**

**All Questions Due: May 10, 2022, at 5:00 p.m.**

**Closing Date & Time: May 25, 2022, at 2:00 p.m.**

**Opening Date & Time: May 25, 2022, at 2:01 p.m.**

**For Information Contact:**

Kasey Gamblin, Purchasing Services, 254-750-8405, or [kaseyg@wacotx.gov](mailto:kaseyg@wacotx.gov)

**Pre-proposal Meeting Location:**

<https://wacotx.zoomgov.com/j/1614533220?pwd=cGJSVTc4d1gxVEsrS2dGcVFrYngwdz09>

**On April 27, 2022, at 10:00 A.M. local time**

**RFP Opening Location:**

Purchasing Services Office, 1415 N. 4<sup>th</sup> Street, Waco, Texas

**Zoom & Dial-In Information:**

See Page 2

Purchasing Services  
Post Office Box 2570  
Waco, Texas 76702-2570  
Telephone 254 / 750-8060  
Fax 254 / 750-8063

[www.waco-texas.com](http://www.waco-texas.com)

# Proposal Submission

**Proposal Due Date:** May 25, 2022

**Pre-proposal Meeting:** April 27, 2022 @ 10:00 am local time  
(non-mandatory) <https://wacotx.zoomgov.com/j/1614533220?pwd=cGJSVTc4d1gxVEsrS2dGcVFrYngwdz09>

**Submit to City:** 1 printed, signed, original proposal and signed addenda, with sealed financial statements included  
1 flash drive containing an electronic version of the proposal and any supporting documentation, including the following files:  
CIS and EAM System Selection - Specifications.xlsx  
CIS and EAM System Selection - Vendor Forms and Questionnaire.docx  
CIS and EAM System Selection – Pricing Forms.xlsx

Send to:

City of Waco - RFP #2022-004  
Attn: Kasey Gamblin  
1415 North 4<sup>th</sup> Street  
Waco, TX 76707

**Important Notice:**

**Effective immediately upon release of this request for proposal (RFP), and until notice of contract award, all official communications from proposers regarding the requirements of this RFP shall be directed to the:**

kaseyg@wacotx.gov

The City, or designee, shall distribute all official changes, modifications, responses to questions or notices relating to the requirements of this RFP. Any other information of any kind from any other source shall not be considered official, and proposers relying on other information do so at their own risk.



# City of Waco, Texas

RFP #2022-004

## Customer Information Center (CIS) and Enterprise Asset Management (EAM) System Selection

### REGISTER INTEREST

You have received a copy of the above-described Request document. If you would like to register your interest in this project so that you will receive any future notices or addenda concerning the project, please fill in the information requested below and fax this page to 254-750-8063. You may also scan this page and email to: [kaseyg@wacotx.gov](mailto:kaseyg@wacotx.gov)

Company/Firm: \_\_\_\_\_

Name of Contact Person(s): \_\_\_\_\_

Email(s): \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

It is your responsibility to complete and return this form to the City. Failure to do so will result in your not receiving notices and addenda related to this project from the City of Waco.

Notices and addenda are posted on the City's website and can be accessed at: <http://www.waco-texas.com/purchasing-rules.asp>.

City of Waco Purchasing Services  
Post Office Box 2570  
Waco, Texas 76702-2570  
Telephone 254 / 750-8060  
Fax 254 / 750-8063  
[www.waco-texas.com](http://www.waco-texas.com)

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### Anticipated Timeline Overview

Listed below are specific and estimated dates and times of actions related to this request for proposal (RFP). The actions with specific dates must be completed as indicated unless otherwise changed. In the event that it is necessary to change any of the specific dates and times in the calendar of events listed below, an addendum to this RFP will be issued.

<b>Milestone</b>	<b>Timeframe</b>
RFP issuance	April 13, 2022
Vendor pre-proposal meeting	April 27, 2022
Deadline for clarification questions	May 10, 2022 @ 2:00 pm MT
City distributes responses for Vendor RFP clarification questions	May 13, 2022
Vendor proposals due	May 25, 2022 @ 2:00 pm MT
Notification of demonstration dates	July 2022
Demonstrations of software	August 2022
Site Visits and other due diligence	Fall 2022
Contract negotiations and award	Dec 2022



## 1 Introduction

### 1.1 Overview

The City of Waco, TX's Utilities department is interested in soliciting proposals from qualified providers of utility software whose product offering meets or exceeds current City requirements and whose complete product offering provides a robust solution set that will allow the City to continue to leverage this investment well into the future as the needs of the City grow and evolve.

City of Waco is looking for a CIS system that addresses the complete meter-to-cash flow process and allows our customer representative to provide effortless customer service to our 49,000 accounts. This system, at a minimum, must include work order processing, account maintenance, billing, flexible bill formatting, advanced billing (takes into account customer preferences), accounts receivable, credit collection, statement preparation, product/service management, and payment processing. The new system should help to reduce costs by streamlining processes while providing quality services to our customers. Easy access of reports is a must for our new system.

The system should have the ability to integrate with any workorder and/or asset management selected by the utility. We prefer one work order system that will work well with all of Utilities but will consider a fully integrating system that works with the CIS and the Asset Management systems. We are looking for a system that can provide a 360 view of the customer, their location, and the surrounding area to assist our customer representatives in providing immediate and up to date information to our customers about their concerns. A complete customer relationship management that includes streamline operation systems to make it easy for the City of Waco to assign, schedule and track all consumer base activities.

The Enterprise Asset Management (EAM) system should be configured for water and wastewater system to track and manage water/wastewater pipes, plants, lift stations, water storages, the condition, soils, bedding, and provide a risk rating system based not only on the condition of the asset but its impact on things around it. For example, a water line that feeds a hospital would have a higher risk than a water line that feeds a residential neighborhood.

#### Definitions

The following definitions are used in the RFP:

- **Client or City** means the City of Waco, TX
- **Plante & Moran, PLLC**: The City's consultant and co-project manager for the project.
- **Vendor or Proposer** means a firm, company or organization submitting a proposal in response to this RFP.
- **CIS**: Customer Information System means the utility billing and customer service software solution that the successful Vendor responding to this RFP will be responsible for providing
- **EAM**: Enterprise Asset Management system or software is the software solution that will be used to track and manager utility assets that the successful Vendor responding to this RFP will be responsible for providing
- **Utility Software Replacement Project**: is the name of this project which includes both the CIS and EAM software solutions

## 1.2 City/Utility Background

Waco is the 25th largest city in Texas and is the county seat of McLennan County, which has an area of more than 1,000 square miles. Efforts by the community’s leadership over the past several years led to diversification in the regional economy; a major factor contributing to significant improvement in growth and development. Waco provides an inviting atmosphere for business, while maintaining a quality of life comparable to that in larger cities.

Water Utility Services is comprised of Thirteen divisions.:

- Water Treatment
- Meter Services
- Distribution
- Administration
- Lake Brazos Dam
- Wastewater Treatment
- Pretreatment
- Collections
- Utilities CIP
- Water Office
- Water Laboratory
- Lake Waco Wetland
- Watershed Protection

Water Utility Services is made of thirteen unique divisions and 204 team members of which 51% hold a professional license. Team members work from eight different locations. Our water system is comprised of 3 water treatment plants capable of treating over 84 million gallons of water a day, 1,086 miles of water lines (Waco to Chicago), 6 elevated water storage tanks, 13 ground storage tanks, over 17,000 valves, over 49,000 meters and over 90 miles of watershed. Our wastewater system is comprised of 2 wastewater treatment plants capable of treating 46.5 million gallons of waste a day, 887 miles of wastewater lines (Waco to Denver) and 64 lift stations. In the past five year our CIP Group has completed over 67 projects totaling more than \$69,000,000 and has 51 projects in various stages totaling \$130,000,000.

## 1.3 Current Application Environment

<b>*Legend for Current Applications</b>	
<b>Legend Code</b>	<b>Description</b>
R Replacement	The City is intending on replacing this application with the selected solution.
C Consider	The City is considering replacing this application with the selected solution, based on the strength of the finalist Vendor offering and cost / benefit of the replacement module
M Maintain	The City is intending on retaining the application, not replacing it through this effort
I Interface	The City is intending on keeping the application and interfacing/integrating it with the selected solution.

Current Application	Application Notes/Description	Likely Future?*
<b>Alexander DataZeo</b>	Meter reading software for handheld devices (phasing out & moving to ITRON)	M
<b>Authorize.Net</b>	Credit card payment processing	I
<b>BTLIMS</b>	Water lab results tracking	M
<b>CentralSquare/H.T.E.</b>	Current CIS/utility billing system	R
<b>CIS Avaya CMS Supervisor</b>	Track & monitor calls in que, agent status, historical data, etc.	M
<b>Cognos</b>	H.T.E. report writer	R
<b>DataProse</b>	Third party bill print vendor	I
<b>Engage</b>	Recording device to monitor customer calls.	M
<b>ESRI GIS</b>	GIS software	I
<b>Faster</b>	Maintenance management	I
<b>FileBound</b>	Document management system; archive location for work orders, photos, locates and reports	C
<b>Forte</b>	Selectron's IVR payment processor	M
<b>Fuel Master</b>	Fuel management	M
<b>iSeries Downloader</b>	Report generator	R
<b>ITRON</b>	AMI reading and data software	I
<b>Linko</b>	Waco Metropolitan Area Regional Sewerage System (WMARSS) customer charges tracking software	I
<b>Microsoft Access</b>	Filing SSO's & other compliance related reports	M/R
<b>Microsoft Excel</b>	Data entry	R
<b>MS Office 365</b>	Outlook, Word, Excel	I
<b>Network Fleet</b>	GIS software for tracking vehicles	I
<b>Online Utility Exchange</b>	Background check software	I
<b>Project Mates</b>	Project management system	M
<b>Rock Solid 311</b>	Service request system	C/I
<b>Selectron Relay</b>	Monitor IVR system	I
<b>Texas 811</b>	Utility locates	M
<b>Tyler Munis</b>	Financial management system	I
<b>Vantage Point</b>	Maps of water infrastructure that links to CentralSquare/H.T.E	I
<b>WasteWORKS</b>	Weight information from WasteWORKS imported daily into CIS	I
<b>WaterSmart</b>	Customer portal	I
<b>Wells Fargo</b>	Upload bank draft and process e-box payments	I

## 1.4 Current Technical Environment

The City has established technology standards and would prefer to adhere to them as part of the implementation of the Utility Software Replacement Project. The tables below provide basic information with a current summary of the City’s network and computing environments, and standards. The City of Waco adheres to industry standards for all network infrastructure. Additional information may be provided upon request.

As part of the proposal process Vendors will be required to submit significant technical details about the proposed solution detailed in section 3.4 of this RFP. In preparing responses, Vendors must remain diligent in referencing this table to assure that responses clearly identify:

- Areas of known or potential conflict between the Vendors proposed solution and the City’s defined environments
- Recommendations of how best to implement and operate the proposed solution within the City’s defined environments

### 1.4.1 Summary of Network and Computing Environment

#### Network Infrastructure Configuration (WAN & Internet)

The City of Waco leverages two Internet connections to deliver redundancy for systems supported.

#### Data Center

The City of Waco supports two primary data centers equipped with battery backups and generators to support network resiliency.

#### Data Network

The City of Waco leverages industry standard switches, storage environments, and server systems to support the Data Networks for our user community.

#### Server & Operating System Standard

Windows Server 2012, Windows Server 2016, Windows Server 2019, and Windows Server 2022

#### Storage & Backup Environment

The City of Waco leverages industry standard storage and backup environments to enable a 3, 2, 1 backup and disaster recovery environment.

#### Workstation Standard

Dell laptop computers, Dell desktop computers, and Microsoft Surface tablets. Microsoft Windows 10.

#### Web Browser Standard

Google Chrome and Microsoft Edge.

#### Current CIS Systems

CentralSquare

#### Staffing

5 FTE’s in the Information Technology Enterprise Applications department.

**1.4.2 City Technical Standards**

Technical Standards	
Backup solution	Veeam, ShadowProtect,
Business application environment	Windows
Desktop hardware	Dell Optiplex w/ i7
Desktop operating system	Windows 10
Email system	O365
Geographic information system (GIS)	ESRI ArcGIS
Handheld devices	iPad
Imaging/content management system	FileBound
Internet browser	Google Chrome, Microsoft
Network operating system	Active Directory
Single Sign On (SSO)	OneLogin
Proxy server	n/a
Relational databases	SQL
Remote access	Industry standard VPN
Report writer	Cognos, Microsoft Reporting
Server hardware	Dell
Server operating system	Windows 2012, 2016, 2019
Server virtualization	VMWare
User authentication	AD
Virus scanning software	CrowdStrike
Web server software	IIS, Apache Tomcat

**1.5 Other Planned Technology Initiatives**

Project Description	Timing
The City is nearing the end of their AMI implementation	Should be completed by December 2022
New Internet connection to support Cloud environments.	October 2022
Upgrade to Enterprise GIS environment and database	September 2022
New City of Waco Website and Content Management System	August 2022

## 1.6 Expected Scope of System Solution

The City of Waco, TX has a preference that responding vendors propose a fully-integrated CIS and EAM solution that will include all modules below. If the vendor cannot propose on every module requested by the City of Waco, TX, they are encouraged to partner with other software providers to submit a proposal that satisfies all of the core areas.

The City of Waco prefers a best-in-class solution that has a robust Cloud-based strategy to deliver a high-performing solution that meets the needs of our customers and our organization. Please provide your vision and plan for the City of Waco and clearly define the recommended Public Cloud, Private Cloud, or City-hosted solutions needed to build a High Performing City Government within the RFP. A detailed description of these solutions must be clearly delineated in the appropriate sections of the RFP response.

### Response options:

- Vendors may respond to CIS (Option 1) modules, EAM (Option 2) modules, or preferably both.
- Vendors may partner with other vendors to submit a proposal that meets all the software required in this RFP.

### Software:

- CIS Modules/Functionality:
  - Account Management
  - Billing
  - Cash Receipting
  - Delinquency
  - Device Management
  - Rates
  - Services Orders
- EAM Modules/Functionality:
  - Asset Management
  - Facilities Management
  - Fleet & Equipment Management
  - Inventory Management
  - Service Requests
  - Work Orders
- Any other necessary software components to support the proposed solution
- Others not requested but proposed by responding Vendors

### Services:

- **Required Services**
  - Project Management
  - Hardware design and installation consulting
  - Software Installation
  - Data Conversion
  - Report Development
  - Integration and Interface Development
  - Software Modifications
  - Implementation and Training Services
  - Change Management
  - Knowledge Transfer to Staff

- System Documentation Development
- Operational Redesign Assistance
- Ongoing Support and Maintenance Services
- On-Going Hosting Services
- **Optional Services**
  - End User Training

Additional details and descriptions related to the specifics of the expected scope can be found in section 3 – Proposal Response Format.

### 1.7 Summary of Key Transaction Volumes

A summary of key transaction and operating volumes and standards is included below. These volumes and standards reflect actual & estimated amounts for the current environment.

Operating Volumes/Standards	Current
<b>City of Waco, TX</b>	
Population	139,236
Form of Government	Council - Manager
Jurisdictional Area (Square Miles)	99
Number of CIS System Users (Total Current)	200
Number of Asset Management System Users (Total Current)	7
Number of anticipated field workers (for mobile workforce management)	70
<b>Number of Estimated Future Users Per Area</b>	
Number of CIS Users	200
Number of Asset and Work Management Users	100
<b>Cash Receipting</b>	
Receipting Model (Centralized or Decentralized)	Centralized
Number of Cash Registers / POS Terminals	3 or 4 ?
<b>Utility Billing</b>	
Major services billed	WA, SW, GB, DF, WI
# of customers/Accounts (as of March 2022)	46,245
Read Method	Antenna & Drive by
Frequency of Billing	Daily
Number of Billing Cycles	20
Number of Annual Bills	510,264
Number of Annual Late Reminders/Notices	18,726
Number of Annual Shut Offs ( non-pay 3,685 ) or ( turn offs 8,364 ) ?	3,685
<b>Asset Management</b>	
Number of annual work orders ( CIS 68,643, RMG 36,799, plants 10,000)	120,442
Number of Assets	
Water Fixtures	72,435
Water Lines	87,079assets/close to 6,000,000 feet in length
Sewer Fixtures	33439
Sewer Lines	44, 799 assets/close to 5,000,000 feet in length
Storm Drainage Fixtures	14,148
Storm Drainage Lines/Channels	17,620 assets/ close to 2,100,000 ft in length



### 1.8 Overall Evaluation Process

Responses to this RFP will be evaluated by a committee consisting of various process owners within the City. The City’s intent is to acquire the solution that provides the best value to the City and meets or exceeds both the functional and technical requirements identified in this RFP.

The City will be using the following process to reach a finalist Vendor decision:

1. **Minimum Criteria:** As part of the Vendor’s RFP response, the following minimum criteria must be met for a proposal to be considered for further evaluation. Failure to meet all of these criteria will automatically disqualify the Vendor’s response from further consideration:

- **Minimum Client Software Installations**  
Must have provided software for at least one previous municipality in the State of Texas, of similar size (or larger), complexity and scope.
- **RFP Response**  
RFP response is submitted by the due date and time.
- **Response Authorization**  
The RFP response is signed by an authorized company officer.
- **Response Completeness**  
Vendor complied with all instructions in the RFP and provided a response to all items requested with sufficient detail, which provides for the proposal to be properly evaluated. Any deficiencies in this regard will be determined by the City’s Purchasing Director to be either a defect that the Director will waive or that the proposal can be sufficiently modified to meet the requirements of the RFP.

2. **Round 2 Evaluation:** For those Vendors whose proposals pass the minimum criteria, the following categories of criteria will be used to further evaluate the proposals in the following order of preference from high to low:

Functional requirements	35
Technical requirements	10
Cost	10
Implementation approach & ongoing support	25
General Vendor to include number and size of comparable municipal installations, financial stability, completeness of response, and quality of proposal response	20
Total	100

3. **Round 3 Evaluation:** The top Vendors in the second round evaluation will then proceed to an additional level of due diligence that may include the following activities:
- Follow-up questions and answers with the Vendors.
  - On-site Vendor demonstrations to include module/functionality demonstrations, technical demonstrations, service presentation, and other due diligence.
  - Reference checking with comparable entities using the Vendor's product.
  - Potential site visits to comparable entities using the Vendor's product.

At any point in time during the third round of evaluation, a Vendor may be excluded from further consideration. At the conclusion of the round three activities, the finalist Vendors will be judged on all information collected to date against the following criteria in order of preference:

Functionality	<b>40</b>
Technical requirements	<b>15</b>
Investment and costs	<b>10</b>
Service and support	<b>30</b>
Vendor Viability	<b>5</b>
<b>Total</b>	<b>100</b>

The City will then enter into contract negotiations with the Vendor whose overall solution best meets the needs of the City over the long-term.

## 2 Vendor Proposal Guidelines

### 2.1 Intent

It is the intent of the City of Waco, TX (“the City”), through this request for proposal and the contract conditions contained herein, to establish to the greatest possible extent complete clarity regarding the requirements of both parties to the agreement resulting from this request for proposal.

Before submitting a proposal, the Vendor shall be thoroughly familiarized with all contract conditions referred to in this document and any addenda issued before the proposal submission date. Such addenda shall form a part of the RFP and shall be made a part of the contract. It shall be the Vendor's responsibility to ascertain that the proposal includes all addenda issued prior to the proposal submission date.

The terms of the RFP and the selected Vendor's proposal and any additional documentation (e.g. questions and answers) provided by the Vendor during the solicitation process will be integrated into the final contract for services entered into between the City and the selected Vendor. It shall be the Vendor's responsibility to ascertain that the proposal includes all addenda issued prior to the proposal submission date. Addenda will be posted on the City's internet site along with the RFP.

The Vendor shall determine by personal examination and by such other means as may be preferred, the conditions and requirements under which the agreement must be performed.

### 2.2 Deadline for Proposals

Proposals must conform to the requirements set forth in the RFP. Proposals not conforming to these guidelines may be rejected as non-responsive.

Proposals must be submitted **by 2:00 p.m., local time, May 25, 2022** to:

City of Waco - RFP #2022-004  
Attn: Kasey Gamblin  
1415 North 4<sup>th</sup> Street  
Waco, TX 76707

The Vendor must submit **Two (2) hard copies** signed, completed, original proposal with sealed financial statements and **one (1) electronic copy** of the Vendor's proposal. The electronic proposals should also include the following files:

CIS and EAM System Selection - Specifications.xlsx  
CIS and EAM System Selection - Pricing Forms.xlsx  
CIS and EAM System Selection - Vendor Forms.docx

The two proposals with sealed financial statements and flash drive must all be accompanied in the same package.

Proposals received after the deadline will not be accepted. Proposals may not be delivered via facsimile or e-mail and not recommended via USPS (due to delays). Proposals shall be sent by Federal Express (or comparable carrier) or hand delivered to the above address. The full name and address of the proposer will be clearly marked on the outside of the package that is inside the Federal Express package or comparable carrier.

### **2.3 Preparation of Proposals**

Proposals shall be prepared in accordance with the proposal response format, section 3. Proposals not complying with this format may be considered non-responsive and may be removed from consideration on this basis.

### **2.4 Requirements for Signing Proposal**

- Each proposer, by making a proposal, represents that this document has been read and is fully understood.
- The proposal must be signed in ink by an individual authorized to legally bind the person, partnership, company, or corporation submitting the proposal.
- All manual signatures must have the name typed directly under the line of the signature.
- The above requirements apply to all RFP addenda.

## 2.5 Register Interest Form

Prospective Vendors are encouraged to submit a written Register Interest Form via email before **April 27, 2022**. Submitting a Register Interest Form does not obligate the Vendor to submit a proposal and is not mandatory to submit a proposal. By submitting this document, a prospective Vendor will receive amendments and notices to this RFP. The written Register Interest Form must include the company name, mailing address, phone number, fax number, and email address of the Vendor's main contact for communications regarding this RFP. Prospective Vendors should **email** this information to the following contact with a subject line of "RFP 2022-004 CIS and EAM System Selection Intent to Propose":

kaseyg@wacotx.gov

Written responses to written questions and requests for clarifications regarding the RFP will be posted on the City's website and State's Electronic State Business Daily (ESBD) website as well as on DemandStar via Addendum.

## 2.6 No Ex-Parte Communications during Competitive Bidding Period

To ensure the proper and fair evaluation of a response, the City prohibits ex-parte communication (e.g., unsolicited) initiated by the proposed Vendor to a City official, the City-Council members, or an employee evaluating or considering the responses prior to the time a formal decision has been made. Questions and other communication from vendors will be permissible until 4:00 pm on the day specified as the deadline for questions. Any communication between responder and the City after the deadline for questions will be initiated by the appropriate the City official or employee to obtain information or clarification needed to develop a proper and accurate evaluation of the response. Ex-parte communication may be grounds for disqualifying the offending responder from consideration or award of the solicitation then in evaluation, or any future solicitation.

## 2.7 RFP Clarifications and Questions

If any person contemplating submitting a proposal is in doubt as to the true meaning of any part of this RFP, he/she may submit to the City a written request for an interpretation thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation will be made only by an addendum. Failure on the part of the prospective proposal responder to receive a written interpretation before the submission deadline will not be grounds for withdrawal of proposal. Vendor will acknowledge receipt of each addendum issued by stating so in his/her proposal. No oral explanation or instruction of any kind or nature whatsoever given before the award of a contract to a Vendor shall be binding.

All inquiries regarding this proposal must be written and should be **emailed** with a subject line of "RFP 2022-004 CIS and EAM System Selection" to:

kaseyg@wacotx.gov

Inquiries regarding the proposal will be accepted up to and including **May 10, 2022 at 2:00 PM local time**. Responses to questions will be mailed or emailed to Vendors who have submitted a timely intent to propose document via an addendum to this RFP.

## **2.8 Vendor Pre-Proposal Meeting**

A non-mandatory Vendor pre-proposal meeting will be held on **April 27, 2022** at **10:00 am MT** via a Zoom meeting.

<https://wacotx.zoomgov.com/j/1614533220?pwd=cGJSVTc4d1gxVEsrS2dGcVFrYngwdz09>

If you are unable to attend, please see section 2.7 for RFP clarification and questions.

## **2.9 Consideration of Proposals**

In cases where an item requested is identified by a manufacturer's name, trade name, catalog number, or reference, it is understood that Vendor proposes to furnish the item so identified and does not propose to furnish an "equal" unless the proposed "equal" is pre-approved by the City.

References to any of the above are intended to be descriptive but not restrictive and only indicate articles that will be satisfactory. Proposals on "equal" will be considered, provided that the Vendor states in his proposal exactly what he proposes to furnish, including sample, illustration, or other descriptive matter which will clearly indicate that character of the article covered by such proposal. The designated City representative hereby reserves the right to approve as an "equal", or to reject as not being an "equal", any article proposed which contains major or minor variations from specifications requirements but which may comply substantially therewith.

## **2.10 Basis for Award, Evaluation Criteria and Questions**

The qualification of proposal responders on this project will be considered in making the award. The City is not obligated to accept any proposal if deemed not in the best interest of the City to do so. The City shall make award to the qualified proposal responder based on fees submitted and responses to this RFP.

Failure to include in the proposal all information outlined herein may be cause for rejection of the proposal.

The City reserves the right to accept or reject any and all proposals, in whole or in part, that are deemed to be in the best interest of the City at its sole discretion.

The City reserves the right to waive any informalities or irregularities in proposals.

The City reserves the right to negotiate separately the terms and conditions or all or any part of the proposals as deemed to be in the City's best interest at its sole discretion.

Information and/or factors gathered during interviews, negotiations and any reference checks, and any other information or factors deemed relevant by the City, shall be utilized in the final award. The final award of a contract is subject to approval by the City Council.

## **2.11 Advice of Omission or Misstatement**

In the event it is evident to a Vendor responding to this RFP that the City has omitted or misstated a material requirement to this RFP and/or the services required by this RFP, the responding Vendor shall advise the contact identified in the *RFP Clarifications and Questions* section above of such omission or misstatement.

## **2.12 Confidential Information**

Information contained in the Vendor's proposal that is company confidential must be clearly identified in the proposal itself. The City will be free to use all information in the Vendor's proposal for the City's purposes. Vendor proposals shall remain confidential until the City's Selection Committee makes its recommendation to the City Council. The Vendor understands that any material supplied to the City may be subject to public disclosure under the Texas Public Information Act.

## **2.13 Confidentiality Statement**

Any information, including materials, drawings, designs, documentation, and other property or data, disclosed to the proposal responder shall not be used, reproduced, appropriated, or otherwise disseminated to anyone other than the City.

## **2.14 Award of Contract**

The Vendor shall be deemed as having been awarded a contract when the formal notice of acceptance of the Vendor's proposal has been duly served upon the intended awardee by an authorized agent of the City. Note that the successful Vendor, at the time of contract execution, must be licensed to do business in the State of Texas.

### **2.15 Tax Exempt Status**

The City is exempt from paying sales taxes. The City's Federal Taxpayer ID No. is 74-6002468. The City is exempt from federal excise tax. All prices should be quoted FOB Waco, TX.

### **2.16 Reserved Rights**

The City reserves the right to waive any irregularities; accept the whole, part of, or reject any or all proposals; and to select the firm which, in the sole opinion of the City, best meets the City's needs. The City also reserves the right to negotiate with potential Vendors so that the City of Waco, TX's best interests are served.

### **2.17 Advertising**

Vendor shall not advertise or publish the fact that the City has placed this order without prior written consent from the City, except as may be necessary to comply with a proper request for information from an authorized representative of a governmental unit or agency.

### **2.18 Trademarks**

The City warrants that all trademarks the City requests the Vendor to affix to articles purchased are those owned by the City and it is understood that the Vendor shall not acquire or claim any rights, title, or interest therein, or use any of such trademarks on any articles produced for itself or anyone other than the City.

### **2.19 Right to Request Additional Information**

The City reserves the right to request any additional information that might be deemed necessary during the evaluation process.

### **2.20 Right of Refusal**

The City reserves the right to refuse any or all proposals in their entirety, or to select certain equipment or software products from various Vendor proposals, based on the best interests of the City.

### **2.21 Proposal Preparation Costs**

The Vendor is responsible for any and all costs incurred by the Vendor or his/her subcontractors in responding to this request for proposal.

### **2.22 System Design Costs**

The successful Vendor shall be responsible for all design, information gathering, and required programming to achieve a successful implementation. This cost must be included in the base proposal.



### **2.23 Pricing Eligibility Period**

All Vendor proposals are required to be offered for a term not less than **180 calendar days** in duration. A proposal may not be modified, withdrawn, or cancelled by Vendor during the 180 day time period following the time and date designated for the receipt of proposals. It is the City's intent to procure that software solution that meets that long term criteria of the City. The City, during the course of the selection process, may decide to purchase a subset of the Vendor's proposal components with the initial contract. The City requires that Vendors agree for a period of (3) years from the date of the Vendor's proposal to honor software and services pricing established within the Vendor's proposal response for Vendor proposed components which are not included in the City's initial purchase. The price of the proposed components can only be increased by the Vendor during such time period by an amount equal to the annual CPI-U adjustment for the South region or 3%, whichever is less.

### **2.24 Additional Charges**

No additional charges, other than those listed on the price breakdown sheets, shall be made. Prices quoted will include verification/coordination of order, all costs for shipping, delivery to all sites, unpacking, setup, installation, operation, testing, cleanup, training, and Vendor travel charges.

### **2.25 Turnkey Solution**

All prices quoted must include all ancillary hardware equipment (if applicable), software and services necessary to make the system specified fully operational for the intent, function, and purposes stated herein. The City reserves the right to purchase hardware separately, if needed.

### **2.26 Purchase Quantities**

The City reserves the right to purchase any quantities of hardware or software items bid without altering the unit purchase price upon award and throughout the contract period.

### **2.27 Rights to Pertinent Materials**

All responses, inquires, and correspondence relating to this RFP and all reports, charts, displays, schedules, exhibits and other documentation produced by the Vendors that are submitted as part of the proposal shall become the property of the City upon receipt, a part of a public record upon opening, and will not be returned.

The City reserves the right to accept any proposal, to reject any or all proposals, to waive any irregularities in the proposal process and to accept any proposal in the best interest of the City.

### **2.28 Insurance Requirements**

The City will require the finalist Vendor to retain insurance coverage in amounts and kinds to be negotiated with the finalist. Please refer to the sample minimum contract terms and conditions in section 5.

### 3 Proposal Response Format

To facilitate the analysis of responses to this RFP, the Vendor is required to prepare their proposals in accordance with the instructions outlined in this section. **Vendors must respond in full to all RFP sections and follow the RFP format (section numbering, etc.) in their response. Failure to follow these instructions may result in rejection.**

**For each question asked in the RFP, the proposer shall provide in their response, the question asked and their answer using the section numbering of the RFP.**

Proposals shall be prepared to satisfy the requirements of the RFP. *EMPHASIS SHOULD BE CONCENTRATED ON ACCURACY, COMPLETENESS, AND CLARITY OF CONTENT.* All parts, pages, figures, and tables should be numbered and labeled clearly. The proposal should be organized as follows:

Section	Title
Separate Sealed Document	Company Financials
1	Executive Summary
2	Company Background
3	Application Software
4	Technical Requirements
5	Vendor Hosted Option
6	Implementation Plan
7	Staffing Plan
8	Ongoing Support Services
9	Functional System Requirements
10	Client References
11	License and Maintenance Agreements
12	Exceptions and Deviations
13	Other Required Forms and Attachments
14	Addenda

Instructions relative to each part of the response to this RFP are defined in the remainder of this section.

Costs for the Vendor's proposed solution should be submitted on the proposal pricing forms provided in the included Microsoft Excel pricing spreadsheet. Costs should include the complete costs for the solution including travel and operating costs. Use additional pages as needed.

### 3.1 Executive Summary (Section 1)

This part of the response to the RFP should be limited to a brief narrative not to exceed two (2) pages describing the proposed solution. The summary should contain as little technical jargon as possible and should be oriented toward non-technical personnel. The executive summary should not include cost quotations.

### 3.2 Company Background (Section 2)

In addition to providing responses to the following items, the Vendor must complete the **Company Background Form** found in **section 8.2** of the **Vendor Forms and Questionnaire** document of this RFP, and include it in this section of the response.

Vendors must provide information about their company so that the City can evaluate the Vendor's stability and ability to support the commitments set forth in response to the RFP. Information that Vendors should provide in this section are as follows:

1. The company's background including a brief description (e.g., past history, present status, future plans, company size, etc.) and organization charts.
2. Audited financial information for the past TWO (2) completed fiscal years that includes income statements, balance sheets, and statement of cash flows.
3. Privately-held companies wishing to maintain confidential financial information must provide information detailing the company's long-term stability. Please provide a current Dunn & Bradstreet report (D&B) as part of the Vendor proposal response.
4. If the Vendor is proposing to use subcontractors on this project, please provide a response to the **Company Background Form** for each subcontractor, Vendor relationship with that firm and the specific services and/or products that the subcontractor will be providing on the project. A complete list of subcontractors is required. The City has the right to approve all sub-contractors of the Vendor at any time.

### 3.3 Application Software (Section 3)

While recognizing the City's preference for a Cloud/Vendor-hosted system as described in section 1.6, the City is also contemplating a City-hosted solution. Therefore aspects of the proposed solution to be provided should clearly delineate where they vary between these approaches in the sections below. The Vendor is required to provide a general description of the application program product and how it will meet requirements of this RFP. This section must address, at a minimum, the following items:

1. Describe your overall proposed technology solution.
2. Describe the product direction for the company, including time frames.
3. Describe unique aspects of the Vendor's solution in the marketplace.
4. Describe components of the solution that are industry standards versus being proprietary to the Vendor.
5. Third party products:
  - a. List all third-party products proposed,
  - b. Reason that this product is a third-party product versus being part of the software Vendor's solution,
  - c. Extent to which this third-party product is integrated with the Vendor's solution.

### 3.4 Technical Infrastructure (Section 4)

The Vendor shall provide the information described in this section. The information will be used in the evaluation process. Vendors should identify where conflicts may exist between their solution and current technologies being used in the City as described in section 1.5.

In addition to providing responses to the following items, the Vendor must complete the **Technical Requirements Form** found in **section 8.3** of the **Vendor Forms and Questionnaire** document of this RFP and include it in this section of the response.

While recognizing the City's preference for a Cloud/Vendor-hosted system as described in section 1.6, the City is also contemplating a City-hosted solution, Therefore, aspects of the proposed solution to be provided should clearly delineate where they vary between these approaches in the sections below.

#### 6. Hardware and Storage Environment

- a. Describe the proposed computer hardware and storage environment to support the system. In the event that there are multiple computer systems available, list all options. Indicate which is the preferred hardware platform and why. List the conditions in which the preferred hardware platform would change. A hardware configuration, which takes into account the size of the City, application modules, database size, and anticipated growth, must be provided.
- b. What system architecture do you propose? Describe the number and type of: application servers, database server(s), and development and test environments. Describe your proposal's technical architecture (preferably using a PowerPoint or Visio diagram). This should show components such as the database server, applications server, reporting server, test/training server, firewall(s), web server(s), web browser, minimum workstation requirements, remote access, wireless connectivity, network connectivity to LANs and WAN, etc. Describe any potential use of virtual server technologies (e.g. Microsoft Virtual Server, VMware) and application accelerators and note what Vendors you partner with or recommend and/or support.
- c. Describe your proposed information architecture/model (preferably using a PowerPoint or Visio diagram). This should depict data models, taxonomy, data elements, coding structures, a process for standardizing on a particular coding structure, data definitions (employees, Vendors, invoices, etc.)

### 3.5 Cloud/Vendor-Hosted Option (Section 5)

**Note: Response to this section is optional if not providing this type of solution.**

In addition to providing responses to the following items, the Vendor must complete the **Vendor Hosting Form** found in **section 8.4** of the **Vendor Forms and Questionnaire** document of this RFP, and include it in this section of the response.

1. Please describe your **vendor hosted model** including: hosting, integration, help desk, provisioning and desktop management capabilities, deployment model (dedicated servers, shared environment, etc.), impact to the City's network and bandwidth, and any partners that may be involved in service delivery.

2. Please describe your proposed **service level agreement**, including any tiered levels of service, response times, and standard metrics.
3. Please describe your **support model** including: cost structure for support calls.
4. Please describe your **data center and storage facilities** including: locations, staffing, physical security, environmental controls (including redundant power), redundancy/load balancing capabilities, data backups and disaster recovery capabilities.
5. Please describe your **logical security** including: firewall security, authentication controls, and data encryption capabilities.
6. Please describe your **change management**, upgrade, and patch management policies & practices?
7. Describe your **systems administration/management** capabilities including: monitoring of performance measures, intrusion detection, and error resolution.
8. Describe how you will help the City move to a new operation at the **end of the contract** term or if the contract is terminated, including the process for notifying of termination.
9. Please provide a copy of your most recent **SSAE 16 Type II audit**.

### 3.6 Implementation Plan (Section 6)

The Vendor is to provide an implementation plan in narrative format supported by an activity-level project plan using Microsoft Project that details how the proposed solution is to be implemented. This implementation plan should include the following elements:

1. General Implementation Approach
2. Project Management Approach
3. Hardware, Software & Storage Design and Installation Consulting
4. Data Conversion Plan
5. Report Development
6. Integrations and Interfaces
7. Training
8. Change Management Approach
9. Testing
10. Operational Redesign Approach
11. System Documentation and Manuals
12. Disaster Recovery Plan
13. Knowledge Transfer

The Vendor should not be constrained to only include the above items in the Vendor's proposal response if the Vendor feels that additional elements may add value to the overall implementation. The City requests that the Vendor provide their work plan in a Microsoft Project format as part of the proposal response.

**It is expected that the Vendor will lead the efforts in each of the implementation areas described below unless stated otherwise.** Further details on what is to be provided as part of the Vendors proposed implementation plan are included in the following subsections.

As the City is contemplating a City-hosted versus Vendor-hosted solution, aspects of the services to be provided should be clearly delineated where they vary between these two approaches.

### 3.6.1 General Implementation Approach (Section 6.1)

Provide a general overview of the implementation approach you plan to use for the City that includes addressing the following items:

1. Describe how you transition from the sales cycle to the implementation phase of the project.
2. Describe key differentiators of the approach as it relates to implementing a solution on time, within budget and with the ability to meet the needs of a diverse client like the City.
3. Describe how you conclude on a preferred implementation phasing of software modules. What is your recommended approach for this implementation?
4. Describe your approach towards running parallel systems for a period of time.

Any unique tools, techniques, or methods that you use should be described in this section.

### 3.6.2 Project Management Approach (Section 6.2)

In addition to providing responses to the following items, the Vendor must complete the **Project Management Approach Form** found in **section 8.5** of the **Vendor Forms and Questionnaire** document of this RFP, and include it in this section of the response.

The City expects the Vendor to provide project management resources leading to the successful deployment of the system. This project manager will work as a team member with the City's project managers. It is expected that this project manager will be "on the ground" as appropriate to team with the City PMO. This project manager can be an employee of the Vendor or a partner of the Vendor. In either case, the costs for the project manager should be clearly denoted in the pricing section of this RFP.

As part of any significant engagement, the City employs a project management approach that is based on the Project Management Institute's project management body of knowledge (PMBOK). The City would expect responding Vendors to adhere to such standards as part of the project.

Provide an overall description of the Vendor project management approach towards this type of engagement and projected timing for major phases.

Provide a high-level work plan for achieving the successful deployment of your proposed system.

### 3.6.3 Hardware, Software and Storage Design and Installation Consulting (Section 6.3)

The City usually installs the required hardware and communications equipment for applications. We are open to other proposals to accomplish a successful deployment. The Vendor is expected to specify, furnish, deliver, install, and support all application and system software that may include pre-installing or equipment staging, as applicable depending on the deployment hosting approach. What do you propose for the most effective deployment of hardware, communications, and related equipment?

Additionally, the City expects the selected Vendor to conduct a test of the system backup and recovery solution prior to go-live.

### 3.6.4 Data Conversion Plan (Section 6.4)

It is anticipated that data conversion will occur when migrating to the new application. The Vendor is expected to assist the City in the conversion of both electronic and manual data to the new system. It is expected that the City will be responsible for data extraction from current systems and data scrubbing and data pre-processing and that the Vendor will be responsible for overall data conversion coordination, definition of file layouts, and data import and validation into the new CIS. Please provide pricing for data conversions in the associated Microsoft Excel pricing spreadsheet.

1. Describe your general approach towards data conversion and how you would work with the City to conclude on what should be converted.
2. Please describe your organization's recommended approach toward retention of legacy data.

### 3.6.5 Report Development (Section 6.5)

For specific reporting requirements, it is anticipated that the Vendor will take the lead on developing any reports required as part of the initial deployment of the system. The Vendor is expected to provide specialized knowledge and information to the City staff during the development of needed reports, via technical training on the tools used for report development, database schema and architecture, etc. In addition to providing responses to the following items, the Vendor must complete the **Report Development Form** found in **section 8.6** of the **Vendor Forms and Questionnaire** document of this RFP, and include it in this section of the response.

Provide information on your reporting approach including:

1. Description of various methods of reporting including Business Intelligence.
2. How your solution can work with the City's preferred reporting and data visualization tool, Microsoft Power BI.
3. Methods for the City to identify, specify, and develop required custom City reports during the implementation.

### 3.6.6 Integrations and Interfaces (Section 6.6)

It is expected that information generally would need to be entered only once into the system with seamless integrations between CIS and EAM. Modules within the system should be integrated in real-time with each other such that batch processes are not required to transfer information from one area of the system to another unless that is the preference of the City. Existing City interfaces between core modules that may currently exist (e.g., Customer Portal and Customer Record) or shadow systems that will likely be replaced are not included as they are assumed to be included in an integrated ERP System.

The Microsoft Excel pricing sheet contains a listing of current and/or desired application interfaces. Please provide pricing for interface development in the associated Microsoft Excel pricing spreadsheet.

In addition:

1. Describe the extent to which the various modules are integrated together versus being purchased separately and interfaced

2. Describe your approach towards interfacing and integration with other solutions including use of specific tools, methods, and standards.
3. Describe data exchange methods (e.g. XML, Web Services, or API) supported or provided by your product.
4. As it pertains to the City's current technical environment described previously, identify potential issues for integrating with specific technologies that are used within the City.
5. If local customizations are made, do you provide any tools or assistance to easily incorporate customizations into new version/releases of your software?
6. Have you ever interfaced with the Tyler Munis system? If so, include those references on the reference forms provided, found in **section 7.3** of the **Vendor Forms and Questionnaire** document of this RFP.
7. The Microsoft Excel pricing spreadsheet contains a listing of current and/or desired City application interfaces and their likely need in a future integrated environment. Provide pricing for interfaces in the associated Microsoft Excel pricing spreadsheet

### 3.6.7 Training (Section 6.7)

In addition to providing responses to the following items, the Vendor must complete the **Training Form** found in **section 8.7** of the **Vendor Forms and Questionnaire** document of this RFP, and include it in this section of the response.

The City prefers a "Train the Trainer" approach to training staff. However, they would consider a hybrid solution to training staff. Therefore, both approaches are detailed below. We would like the majority (~75%) of the training to be onsite.

3. **Train the Trainer Approach:** The Vendor will incorporate a "train the trainer" approach where only key City team leads will be trained through implementation on their modules and then the City will train the remainder of the City staff in their respective areas.
  - a. There would be a maximum of 12 Subject Matter Experts (SMEs) & IT staff for each session including one team lead. This training would be provided at a City facility.
  - b. Training materials supplied by the Vendor would be used by SMEs and team leads for training their staff.
  - c. Web conference or remote online tutorial sessions would be available to SME and team lead staff to participate in after initial training was completed in their module.
  - d. Technical implementation training will include training only key IT staff (minimum of 6) to support the new system.
4. **End User Training Approach:** All end-user and technical training will be performed on-site through implementation and be performed by the Vendor.
  - a. End user implementation training will be provided by the Vendor and include joint participation by the relevant City process owner team lead supporting the process area in the new software system.
  - b. Technical Implementation training will include training for all City IT staff on the technologies required to support the new CIS system.

The Vendor should provide an overall description of **both** training methods, including the following:

- General timeframes in which both types of training will be conducted



- The Vendor must list the nature, level, and amount of training to be provided for both options in each of the following areas:
- Technical training (e.g., programming, operations, system administration, etc.)
- User training
- Other staff (e.g., executive level administrative staff)
- Pricing for End User Training Approach should be provided in the Optional tab of the Pricing Form

### **3.6.8 Change Management Approach (Section 6.8)**

The City recognizes that a movement from the current environment to a new solution will present change management challenges. The Vendor should clearly identify their approach towards Change Management including any unique approaches or tools that will be used.

### **3.6.9 Testing (Section 6.9)**

The Vendor should describe their recommended approach to the following types of testing that are anticipated to be performed on the project and the type of assistance they anticipate providing to the City related to such testing:

- a. System testing
- b. Integration testing
- c. Stress/performance testing
- d. User acceptance testing (UAT)

### **3.6.10 Operational Redesign (Section 6.10)**

With the deployment of a new application, the City wishes to take advantage of capabilities within the software that provide support for operational improvements. Vendors are requested to describe their approach towards operational redesign including discussion on the optimal time in which to conduct redesign as it relates to implementation of the new software.

### **3.6.11 System Documentation and Manuals (Section 6.11)**

The Vendor is expected to provide user manuals and online help for use by the City as part of the initial training and on-going operational support. Additionally, the Vendor is expected to provide technical documentation.

1. Describe what documentation (user guide, technical guide, training materials, etc.) is available on the system proposed and any related costs.
2. Describe what types of documentation you anticipate developing during the course of the project.
3. Describe the extent to which documentation is customized for the City's unique needs.

### **3.6.12 Disaster Recovery Plan (Section 6.12)**

Please describe the services you provide around disaster recovery, if any, as part of your proposed solution.

### 3.6.13 Knowledge Transfer (Section 6.13)

The Vendor should describe their process for ensuring that a transfer of knowledge occurs back to City staff such that staff is capable of supporting and maintaining the application in the most proficient manner once the Vendor implementation engagement is complete.

### 3.7 Staffing Plan (Section 7)

In addition to providing responses to the following items, the Vendor must complete the **Staffing Plan Form** found in **section 8.8** of the **Vendor Forms and Questionnaire** document of this RFP, and include it in this section of the response.

1. The Vendor must detail the type and amount of implementation support to be provided (e.g., number of personnel, level of personnel, time commitment, etc.). Include resumes for all personnel that will be assigned to the project. If the Vendor is using a subcontractor, please include information on subcontracting staff being used and their specific role on the project.
2. Please provide an overall project organizational structure for City staff involvement during the project (for both a City-hosted and Vendor-hosted solution). Identify the roles and responsibilities of each component of this structure. This includes an appropriate governance structure in which to manage the project.

### 3.8 Ongoing Support Services (Section 8)

In addition to providing responses to the following items, the Vendor must complete the **Ongoing Support Services Form** found in **section 8.9** of the **Vendor Forms and Questionnaire** document of this RFP, and include it in this section of the response.

1. Please specify the nature and conditions of any post-implementation support options including:
  - a. Post-go live support that is included in the proposal response
  - b. Onsite support (e.g. system tuning, application configuration, interface issues, report development, network optimization, user training and tips to optimize the user experience)
  - c. Telephone support and hours of operation.
  - d. Help Desk services (If there is a service level agreement for your help desk, please provide a copy with your RFP response.)
  - e. Toll-free support line and hours of operation.
  - f. Users group (i.e. - information about it, where it is held and when. If no, are you planning one?)
  - g. Online knowledgebase (i.e. – how it is accesses, who updates it, etc.)
2. Describe your maintenance programs and options with associated pricing.
3. Describe and provide pricing for any cloud-based “software as a service” (SaaS) model that you offer (where there is no up-front license fee, but instead a monthly charge which may include maintenance).

### **3.9 Functional System Requirements (Section 9)**

Responses to the requirements referenced in section 4 of this RFP must be provided in this section of the Vendor's response. Use the Microsoft Excel specification spreadsheet provided and attach added explanation pages as necessary. Please include any costs associated with modifications in the Microsoft Excel pricing spreadsheet. **Please note: The response to these requirements should be provided in the exact Excel format as provided (e.g. no additional macros, formulas, additional columns, modifications, passwords, etc.) on the flash drive. Failure to do so can result in disqualification of the entire proposal.**

### **3.10 Client References (Section 10)**

The Vendor must provide at least **five** references from clients that are similar in size and complexity to the City. The format for completing the Vendor references is provided in found in **section 7.3** of the **Vendor Forms and Questionnaire** document of this RFP, and include it in this section of the response. In addition, the City requests a listing of all utility clients. If possible, at least one of these references should be a Vendor-hosted solution.

### **3.11 License and Maintenance Agreements (Section 11)**

Sample license and maintenance agreements must be provided in this part of the Vendor's response for all components of the recommended solution (*i.e.*, cloud fees, SaaS subscriptions, hardware, software, operating system, database, etc.). Indicate the basis on how licenses are determined.

### **3.12 Exceptions and Deviations (Section 12)**

If the Vendor finds it impossible or impractical to adhere to any portion of these specifications and all attachments, it shall be so stated in its proposal, with all deviations grouped together in a separate section entitled, "exceptions/deviations from proposal requirements". This section will be all-inclusive and will contain a definition statement of each and every objection or deviation with adherence to specific RFP sections. Objections or deviations expressed only in other parts of the proposal, either directly or by implication, will not be accepted as deviations, and the Vendor in submitting a proposal, will accept this stipulation without recourse. Please also include the Contract Terms and Conditions Compliance Checklist (found in **section 6.1**) and the Contract Terms and Conditions – Exception Explanations (found in **section 6.2**) in this section.

### **3.13 Other Required Forms and Attachments (Section 13)**

Please provide all other required forms found in **section 7** of the **Vendor Forms and Questionnaire** document of this RFP, and include it in this section of the response. For Vendors who are proposing a hosted solution, please additionally supply a copy of your Independent Service Auditor's Opinion Letter from your most recent SSAE 16 Type II audit.

### **3.14 Addenda (Section 14)**

Include all original, signed copies of addenda in this section.

### 3.15 Cost Proposal

Costs for the Vendor's proposed solution should be submitted on the proposal pricing forms provided in the associated Microsoft Excel pricing spreadsheet. Pricing forms should remain in the original Excel format.

- The City will not consider time and materials pricing. Vendors shall provide firm and fixed pricing based on the functionality described. For each item, indicate if the cost is one-time, annual, or other.
- The Vendor shall provide price information for each separate component of the proposed solution, as well as the costs of any modifications necessary to fully comply with the RFP specifications.
- If any lump sum amounts are provided, Vendors should indicate in the comments sections what the lump sum consists of.
- In the event the product or service is provided at no additional cost, the item should be noted as "no charge" or words to that effect.
- In the event the product or service is not being included in the Vendor proposal, the item should be noted as "No Bid".
- Vendors shall provide all pricing alternatives in these cost sheets.
- Vendor shall provide prices in U.S. dollars.
- Vendor shall make clear the rationale and basis of calculation for all fees.
- Vendors shall show separate subtotals for the required elements of the proposed solution, and for any layers of optional elements.
- **Please note:** Pricing workbook should be returned in the exact format as provided (e.g. no additional macros, formulas, additional columns, modifications, passwords, etc.). Failure to do so can result in disqualification of the entire proposal.
- 

If presenting software license fees, the Vendor shall:

- Explain all factors that could affect licensing fees;
- Make clear what type of license is offered for each price (named user, concurrent user, installed copies, processor-based, etc.);
- Indicate which product versions, operating platform(s), and machine classes are included for each price;
- Indicate whether a product is for "server" or "client," as applicable; and,
- Make clear the extent of any implementation services that are included in the license fees (installation, configuration, training, etc.)

To the extent possible, Vendors shall show any applicable discounts separately from the prices for products and services.

The City prefers that Vendors provide separate prices for each item in the proposed solution. However, the Vendor is also encouraged to present alternatives to itemized costs and discounts, such as bundled pricing, if such pricing would be advantageous to the City.

The City reserves the right to pursue direct purchase of all items and services proposed, as well as to obtain independent financing.

The City has a preference for a Cloud/Vendor-hosted solution through an ASP or SaaS licensing model as opposed to a traditional on-premise solution. As such, the City is requesting proposals to include detailed information regarding the Vendors hosting and licensing options.

## 4 Functional Requirements

### 4.1 Introduction

The requirements defined in this section contain the overall general functions of the requested software solution. The primary objective of the City in implementing a new system is to provide a more integrated information system environment that will eliminate the redundant entry of data, provide improved system capabilities, provide improved access to data, and streamline overall operations.

**Identified in the attached Excel spreadsheet are a number of requirements that must be addressed by the vendor's proposal.**

These requirements are considered mandatory in implementing the complete solution as defined in section 3. Together they define a system that will operate efficiently in the proposed computer environment while providing a high level of flexibility in meeting the City's current and future data needs. Vendors must replace cells A1:G1 in the first module with the vendor's **Company Name** which will be repeated and printed for each subsequent module.

The **Priority** column includes one of the following entries to indicate the importance of the specification/report to the City:

<b>"R" – Required:</b>	This would be a feature that the City deems essential and must be in a new system.
<b>"D" – Desired:</b>	This is a feature that the City would like in the new system and would add value but is not absolutely necessary.
<b>"O" – Optional:</b>	This would be a feature that, while of interest, is not necessary at this time or something that could be a future deployment.

Each vendor should review the specifications and reports listed in each subsection and respond as to their availability within the vendor's software system. The responses should be entered under the **"Availability"** column of each form as follows:

<b>Y</b>	Functionality is provided out of the box through the completion of a task associated with a routine configurable area that includes, but is not limited to, user-defined fields, delivered or configurable workflows, alerts or notifications, standard import/export, table driven setups and standard reports with no changes. These configuration areas will not be affected by a future upgrade. The proposed services include implementation and training on this functionality, unless specifically excluded in the Statement of Work, as part of the deployment of the solution.
<b>R</b>	Functionality is provided through reports generated using proposed Reporting Tools.
<b>T</b>	Functionality is provided by proposed third party functionality (i.e., third party is defined as a separate software Vendor from the primary software Vendor). The pricing of all third party products that provide this functionality MUST be included in the cost proposal.
<b>M</b>	Functionality is provided through customization to the application, including creation of a new workflow or development of a custom interface, that may have an impact on future upgradability.
<b>F</b>	Functionality is provided through a future general availability (GA) release that is scheduled to occur within 1 year of the proposal response.
<b>N</b>	Functionality is not provided

Use the **Cost** column for “M” or “F” responses to estimate the cost to be incurred by the City to secure the specification/report. Use the **Comment** column to provide additional comments pertaining to your response for that item.

The **Required Product(s)** column is to be used to specify what product (e.g. product name / software module) is proposed. The cells D10:G10 in the form which currently read *“Replace this text with the primary product name(s) which satisfy requirements”* must be updated. This name will be automatically populated in the **Required Product(s)** column for each specification in the module. The automated values in this column must be updated for any exceptions where a different or additional product is required to satisfy the requirement.

**Vendors partnering with another vendor’s product solution, should each complete a General and Technical module specification response for each vendor’s solution.**

## **5 Contract Terms & Conditions**

The contractual terms and conditions will be fully negotiated after a vendor is selected by the City of Waco, TX (the “Client”). Responses to the contract terms outlined in this section may be considered in the selection process and such terms shall be included in the final contract between the Client and the Vendor (the “Agreement”). For purposes of these terms and conditions, the term “Vendor” means the vendor responding to this RFP and all such terms shall apply to any subcontractor of the Vendor. Use of the term “Exhibit <##>” throughout these contract terms refers to supplemental documents that Client expects will be included in the final contract package.

The following contract terms and conditions, substantially in the form contained herein, are expected to be agreed to by the vendors as part of contract negotiations. Exceptions must be explicitly noted in the Vendor Proposals using the checklist forms provided in Attachment <##> of the RFP. Lack of exceptions listed on the checklist forms shall be considered acceptance of all of the terms and conditions as presented in this RFP.

### **General Terms & Conditions**

#### **5.1 Scope of Agreement**

Client agrees to [license][subscribe to] the software detailed in Exhibit <##> (“Software”) and receive the services detailed in the Statement of Work detailed in Exhibit <##> (“Services”). Vendor agrees to provide Software and Services (the “Solution”), subject to the terms and conditions stated in this Agreement including all Exhibits. Payment for such services shall be per Exhibit <##> and shall not exceed the total amount included in Exhibit <##> without the prior written consent of Client. The Client, without prior and mutual written agreement, will incur no other service costs. The service costs in Exhibit <##> are inclusive of all services described in the Statement of Work included as Exhibit <##>. Client agrees to provide server, desktop and other hardware and configuration based on Vendor’s recommendation per Exhibit <##>.

#### **5.2 Incorporation by Reference**

The Vendor shall supply Software and Services adequate to accomplish the requirements as set forth in the Request for Proposal and the Vendor’s response to the Request for Proposal provided herein as Exhibit <##> and Exhibit <##>, respectively (“Contract Documents”) and Vendor’s Documentation. Parties agree that where there is a conflict between terms of this Agreement and the information presented in the Contract Documents, this Agreement shall take precedence. The parties also agree that where there is not a conflict between this Agreement and the information presented in the Contract Documents, that all terms, conditions and offers presented in the Vendor’s proposal shall be incorporated into this Agreement and shall be binding upon all parties to the Agreement.

#### **5.3 Entire Agreement Clause**

This Agreement, including appendices and referenced attachments, constitutes the entire Agreement between the Client and Vendor and supersedes all proposals, presentations, representations, and communications, whether oral or in writing, between the parties on this subject.

#### **5.4 Applicable and Governing Law Clause**

The Agreement shall be subject to all laws of the Federal Government of the United States of America and to the laws of the State of Texas. All duties of either party shall be legally performable in the State of Texas. The applicable law for any legal disputes arising out of this Agreement shall be the law of (and all actions hereunder shall be brought in) the State of Texas, and the forum and venue for such disputes shall be in the courts of appropriate jurisdiction for Waco, Texas.

#### **5.5 Wording Conflicts**

Should there be a conflict in wording between the Agreement and Vendor's RFP response, the Agreement shall prevail.

#### **5.6 Standard Forms and Contracts**

Any forms and contracts the Vendor(s) proposes to include as part of any agreement resulting from this proposal response between the vendor(s) and the Client must be submitted as part of this proposal. Any forms and contracts not submitted as part of the proposal and subsequently presented for inclusion may be rejected. Client reserves the right to accept or reject in whole or in part any form contract submitted by a vendor and/or to require that amendments be made thereto, or that an agreement drafted by the Client be utilized. This requirement includes, but is not limited to, the following types of forms: subcontractor, franchise, warranty agreements, maintenance contracts, third party licenses and support agreements. The Client will negotiate any and all contracts/agreements and prices/fees with the Vendor, if doing so is deemed in the best interest of the Client.

#### **5.7 Term and Termination Clause**

In the event that either party shall fail to maintain or keep in force any of the terms and conditions of this Agreement, the aggrieved party may notify the other party in writing via certified mail of such failure and demand that the same be remedied within 30 business days. Should the defaulting party fail to remedy the same within said period, the other party shall thereupon have the right to terminate this Agreement by giving the other party 30 days written notice. Notwithstanding the foregoing, due to lack of funding, the Client may at any time during the life of this Agreement, terminate same by giving 30 days' notice in writing via certified mail to Vendor. In addition, if at any time a voluntary petition in bankruptcy shall be filed against the Vendor and shall not be dismissed within 60 days, or if the Vendor shall take advantage of any insolvency law, or if a receiver or trustee of the Vendor's property shall be appointed and such appointment shall not be vacated within 30 days, the Client shall have the right, in addition to any other rights of whatsoever nature that it may have at law or in equity, to terminate the contract by giving 30 days' notice in writing of such termination.

#### **5.8 Indemnification**

- A. A CONTRACTOR EXECUTING A CONTRACT WITH THE CITY AGREES TO ASSUME FULL RESPONSIBILITY AND LIABILITY FOR THE SERVICES RENDERED PURSUANT TO THE CONTRACT AND AGREES TO INDEMNIFY, PROTECT, DEFEND, AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, AGENTS, AND SERVANTS, OF AND FROM ALL CLAIMS, DEMANDS, AND CAUSES OF ACTIONS OF EVERY KIND AND CHARACTER, INCLUDING THE COST OF DEFENSE THEREOF, FOR ANY INJURY TO, INCLUDING DEATH OF, PERSONS AND ANY LOSSES FOR DAMAGES TO PROPERTY**



**CAUSED BY OR ALLEGED TO BE CAUSED, ARISING OUT OF, OR ALLEGED TO ARISE OUT OF, EITHER DIRECTLY OR INDIRECTLY, OR IN CONNECTION WITH, THE SERVICES TO BE RENDERED HEREUNDER, WHETHER OR NOT SAID CLAIMS, DEMANDS, CAUSES OF ACTIONS ARE CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND A PARTY TO THIS AGREEMENT, OR WHETHER IT WAS CAUSED BY CONCURRENT NEGLIGENCE OF THE CITY AND SOME OTHER THIRD PARTY.**

- B. Vendor shall assume the defense of the Client pursuant to the provisions of the paragraph above within 30 days of receipt of written notice. Any legal cost or expense, including attorney’s fees, incurred by the Client for enforcement of its rights under the paragraph above between the time by which Vendor should have assumed the Client defense and the time when Vendor assumes the Client’s defense shall be reimbursed by Vendor. Any legal cost or expense, including attorney’s fees, incurred by the Client in the successful prosecution of any litigation or arbitration seeking to enforce the provisions of the paragraph above or in negotiating a settlement of such claim, shall also be reimbursed by Vendor.

Should the parties agree to submit claims, disputes, or other matters arising out of this Agreement to arbitration, they may do so only with written agreement of all parties, including the Client.

**5.9 Insurance**

City of Waco Insurance & Indemnification Requirements  
Professional Services – Technology (01-17-2020)

Insurance Requirements:

A contractor’s financial integrity is of interest to the City. Therefore, subject to a contractor’s right to maintain reasonable deductibles, a contractor shall obtain and maintain in full force and effect for the duration of the contract, and any extension hereof, at contractor’s sole expense, insurance coverage written on an occurrence basis by companies authorized to do business in the State of Texas that are rated A- or better by A.M. Best Company and/or otherwise acceptable to the City in the following types and amounts:

Type	Amount
Workers' Compensation	Statutory
Employer’s Liability	\$1,000,000/\$1,000,000/\$1,000,000
Comprehensive General Liability Including:	\$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage
<ul style="list-style-type: none"> <li>• Premises/Operations</li> <li>• Products Liability/Completed Operations</li> <li>• Personal &amp; Advertising Injury</li> <li>• Broad form property damage, to include fire legal liability</li> </ul>	

Type	Amount
Business Automobile Liability <ul style="list-style-type: none"> <li>a. Owned/leased vehicles</li> <li>b. Non-owned vehicles</li> <li>c. Hired vehicles</li> </ul>	\$1,000,000 per occurrence or its equivalent on a combined single limit (CSL basis).
Cyber Liability <ul style="list-style-type: none"> <li>a. Privacy Liability</li> <li>b. Privacy Regulatory Claims Coverage (where insurable by law)</li> <li>c. Security Breach Response Coverage, including notification expense</li> <li>d. Security Liability</li> <li>e. Data loss/destruction</li> <li>f. Computer fraud</li> <li>g. Cyber Extortion</li> <li>h. Business Interruption</li> <li>i. PCI Fines, Penalties, and Assessments</li> </ul>	Each type of coverage limit: \$5,000,000 per occurrence \$5,000,000 aggregate
Tech E&O Liability	\$1,000,000

Term of Policy: With regard to any approved claims-made policy form, a contractor shall maintain and keep in force and effect said coverage during the term of this contract and for a period of seven (7) years following the expiration or completion of the contract with the City, either through an existing carrier or a carrier of comparable financial statute and reputation.

Modification of Insurance Requirement: The City reserves the right to review these insurance requirements during the effective period of the contract and any extension or renewal and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager or designee, based upon changes in statutory law, court decisions, or circumstances surrounding this contract.

**Proof of Insurance Required and When to Submit:**

Examination & Approval. All insurance policies shall be subject to the examination and approval of the City for their adequacy as to form and content, form of protection, and financial status of insurance company.

When to Submit. Prior to the execution of the contract by the City of Waco and before commencement of any work under this contract, a contractor shall furnish proof of insurance to the City’s Risk Manager which is clearly labeled with the contract name and City department. The proof will include completed/current Certificate(s) of Insurance, endorsements, exclusions, and/or relevant extracts from the insurance policy, or copies of policies. Thereafter, new certificates, policy endorsements, exclusions, and/or relevant extracts from insurance policies, or policies shall be provided prior to the expiration date of any prior certificate, endorsement, or policy. No officer or employee other than the City’s Risk Manager or designee shall have authority to waive this requirement.

Additional Insured. Except for Workers' Compensation, Employers' Liability, and Professional Liability Insurance and Cyber Liability coverages, the City, its elected officials, officers, servants, agents, volunteers and employees shall be named as additional insureds. No officer or employee, other than the City Risk Manager or designee, shall have authority to waive this requirement.

Other-Insurance Endorsement -- All insurance policies are to contain or be endorsed to state that an "Other Insurance" clause shall not apply to the City where the City is an additional insured shown on the policy.

Agent Information. The certificate(s) or other proof of insurance must be completed by the broker of record and must be signed and include the agent information including the agent name, title and phone number. The proof of insurance shall be sent directly from the insurance agent to the City's Risk Management Office by U.S. Postal Service to City of Waco, ATTN: Risk Manager, P.O. Box 2570, Waco, Texas 76702-2570 or by delivery service to 1415 North 4th Street, Waco, Texas 76707. To send by email, please contact the Risk Management Office at 254-750-5730 to obtain the email address.

Precondition to Performance & Basis for Termination. The City shall have no duty to pay or perform under the contract until such certificate(s), policy endorsements, exclusions, and/or relevant extracts from the insurance policy have been delivered to and approved by the City's Risk Manager. The contractor understands that it is the contractor's sole responsibility to provide this necessary information to the City and that failure to timely comply with these insurance requirements shall be a cause for termination of a contract. If the City determines that it will deny payment, not perform, or terminate the contract because of the failure to provide certain information or documents, the City shall give the contractor notice of that determination and allow contractor fifteen (15) days to correct the deficiency.

Waiver of Subrogation. All liability policies will provide a waiver of subrogation in favor of the City. Notice of Cancellation, Non-renewal, Material Change. The Contractor shall provide written notification to the City of the cancellation, non-renewal, or material change of any insurance required herein. The Contractor shall provide such written notice within five (5) business days of the date the Contractor is first aware of the cancellation, non-renewal, or material change, or is first aware that the cancellation, non-renewal, or material change is threatened or otherwise may occur, whichever comes first. Contractor shall provide the City with a replacement certificate(s) of insurance, policy endorsements, exclusions, and/or relevant extracts from the insurance policy either before the cancellation, non-renewal, or material change is effective, if it knew in advance of such, or within ten (10) business days of first learning of the cancellation, non-renewal, or change if it did not learn of that such action in advance.

Employee Litigation: In any and all claims against any party indemnified hereunder by any employee (or the survivor or personal representative of such employee) of the contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the work, or anyone for whose acts any of them may be liable, the indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for contractor or any such subcontractor, supplier, or other individual or entity under workers' compensation or other employee benefit acts.

### **5.10 Insurance Coverage**

SEE 5.9 ABOVE

### 5.11 Limitation of Liability

- A. Limitations. If Client should become entitled to claim damages from Vendor for any reason (including without limitation, for breach of contract, breach of warranty, negligence, other tort claim, or replacement of a solution), Vendor will be liable only for the amount of Client's actual direct damages. In no event, however, will Vendor be liable to Client (in the aggregate for all claims made ) for more than:
- i. 2 times the Value of the Agreement to the extent the Client's actual direct damages are a result of the failure to gain Conditional Acceptance of phases or milestones as defined in the Project Schedule or Final Acceptance of the Solution as a whole up until Client's Conditional Acceptance or Final Acceptance of the Solution, as the case may be; or,
  - ii. Following Final Acceptance of the Solution, 2 times the Value of the Agreement for the Client's actual direct damages that are a result of any other claim brought under the Agreement that arises thereafter.

For avoidance of doubt: (a) "Value of the Agreement" shall mean the one-time charges hereunder for Services and Software licenses, but excluding ongoing charges such as maintenance, (b) failure to gain Conditional Acceptance does not include a decision by the Client to not put the Software in production following successful User Acceptance Testing, and (c) at no point will clause (i) and (ii) be cumulative; 2 times the Value of the Agreement will apply through Final Acceptance, and thereafter will be reduced to 1 times the Value of the Agreement.

- B. No Liability for Certain Damages. In no event will Vendor or any person or entity involved in the creation, manufacture or distribution of any software, services or other materials provided by Vendor under the Agreement be liable for: (i) any damages arising out of or related to the failure of Client or its suppliers to perform their responsibilities; (ii) any claims or demands of third parties (other than those third party claims covered by the indemnification obligations stated herein; or (iii) any consequential, incidental, indirect, exemplary or punitive damages, even if Vendor has been advised of the possibility of such damages.
- C. Exclusions from Limitation; Survival. The foregoing limitations do not apply to the payment of settlements, costs, damages and legal fees referred to herein. The limitations of liability set forth herein will survive and apply notwithstanding any determination by a court of law that a limited or exclusive remedy for breach of warranty set forth in the Agreement is inadequate. The parties agree that the foregoing limitations will not be read so as to limit any liability to an extent that would not be permitted under applicable law.

### 5.12 Texas Public Information Act

Vendor acknowledges that Client is subject by law to responding to all Texas Public Information Act ("TPIA") requests. Vendor shall comply with the TPIA in all respects and shall not restrict or otherwise inhibit Client from complying.

### 5.13 Confidentiality

Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information

could violate rights to private individuals and entities. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein shall survive the termination or cancellation of this Agreement. This obligation of confidentiality shall not apply to (a) information that at the time of the disclosure is in the public domain; (b) information that, after disclosure, becomes part of the public domain by publication or otherwise, except by breach of this Agreement by a party; (c) information that a party can establish by reasonable proof was in that party's possession at the time of disclosure; (d) information that a party receives from a third party who has a right to disclose it to that party; or (e) information that is subject to TPIA requests.

#### **5.14 Title and Confidentiality**

Title and full rights to the Software [licensed][subscribed to] under this agreement, including, without limitation, all intellectual property rights therein and thereto, and any copies Client may make, remain with Vendor. It is agreed the Software is the proprietary, confidential, trade secret property of Vendor, whether or not any portions thereof are or may be copyrighted, and Client shall take all reasonable steps necessary to protect the confidential nature of the Software, as Client would take to protect its own confidential information. Client further agrees that Client shall not make any disclosure of any or all such Software (including methods or concepts utilized therein) to anyone, except to employees, agents, or subcontractors working for Client to whom such disclosure is necessary to the use for which rights are granted hereunder. Client shall appropriately notify all employees, agents, and subcontractors to whom any such disclosure is made that such disclosure is made in confidence and shall be kept in confidence by them. The obligations imposed by this section upon Client, its employees, agents, and subcontractors, shall survive and continue after any termination of rights under this Agreement. It shall not be a breach of this agreement if Client is required to disclose or make the Software available to a third party or to a court if the Software is required to be disclosed pursuant to Texas "open records" law, or is subpoenaed or otherwise ordered by an administrative agency or court of competent jurisdiction to be produced.

#### **5.15 Identification of Parties to the Agreement Clause**

Both the Vendor and Client shall be clearly identified by name. Neither of the identified parties to the Agreement shall assign or encumber any of its rights, or delegate or subcontract any of its duties defined in the Agreement, in whole or in part, to other third parties unless the other party to the Agreement gives prior written consent. Subject to the foregoing covenant against assignment and delegation, the rights created by the Agreement shall pass to the benefit of the identified party and the duties and obligations resulting from the Agreement shall bind the identified party and their respective successors and assignees.

#### **5.16 Notices Clause**

All notices or communications required or permitted as a part of the Agreement shall be in writing (unless another verifiable medium is expressly authorized) and shall be deemed delivered when:

1. Actually received, or
2. Upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the party, or
3. If not actually received, 10 days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed

- and addressed to the respective other party at the address set out in the section of the Agreement titled "Identification of the Parties to the Agreement" or such other address as the party may have designated by notice or Agreement amendment to the other party, or
4. Upon delivery by the Client of the notice to an authorized Vendor representative while at Client site.

Consequences to be borne due to failure to receive a notice due to improper notification by the intended receiving party of the intended receiving party's new address will be borne by the intended receiving party. The addresses of the parties to this Agreement are as follows:

Vendor	Client
<Contact Title>	<Contact Title>
<Address>	<Address>

### **5.17 Agreement Extension and Modification Clause**

The Agreement may be modified or extended in accordance with the following procedures. In the event that all parties to the Agreement agree that such changes would be of a minor and non-material nature, such changes may be effected by a written statement that describes the situation and is signed, prior to the effectiveness, by all parties. In the event that the changes are determined by either or all parties to the Agreement to be of a major or complex nature, then the change shall be by formal amendment of the Agreement signed by the parties and made a permanent part of the Agreement.

Under no circumstances, however, shall any parties to the Agreement forfeit or cancel any right presented in the Agreement by delaying or failing to exercise the right or by not immediately and promptly notifying the other party in the event of a default. In the event that a party to the Agreement waives a right, this does not indicate a waiver of the ability of the party to, at a subsequent time, enforce the right. The payment of funds to the Vendor by Client should in no way be interpreted as acceptance of the Software or the waiver of performance requirements.

### **5.18 Changes in Agreement**

The Agreement may be changed only upon the written agreement between Client's City Manager or designee and the Vendor.

### **5.19 Survival Clause**

All duties and responsibilities of any party that, either expressly or by their nature, extend into the future, shall extend beyond and survive the end of the contract term or cancellation of this Agreement.

### **5.20 Effect of Regulation**

Should any local, state, or national regulatory authority having jurisdiction over the Client enter a valid and enforceable order upon the Client which has the effect of changing or superseding any term or condition of this Agreement, such order shall be complied with, but only so long as such order remains in effect and only to the extent actually necessary under the law. In such event, this Agreement shall remain in effect, unless the effect of the order is to deprive the Client of a material part of its Agreement with the Vendor. In the event this order results in depriving the Client of material parts or raising their costs beyond that defined in this Agreement, the Client shall have the right to rescind all or part of this Agreement (if such a rescission is practical) or to end the Agreement term upon 30 days written prior notice to the Vendor. Should the Agreement be terminated under such circumstances, the Client shall be absolved of all penalties and financial assessments related to cancellation of the Agreement.

The Client shall not be charged for such compliance beyond the cost of the annual [maintenance and support fees][subscription fees]. The Client shall also not be charged for analysis, investigation, design, programming, conversion, or implementation of such compliance beyond the cost of the annual [maintenance and support fees][subscription fees].

### **5.21 Assignments**

Client and the Vendor each binds themselves, their partners, successors, and other legal representatives to all covenants, agreements, and obligations contained in this Agreement. This Agreement or any part thereof shall not be assigned or subcontracted by Vendor without the prior written permission of the Client; any attempt to do so without said prior permission shall be void and of no effect.

The Vendor agrees not to assign, transfer, convey, sublet, or otherwise dispose of the Agreement or any rights, title, or interest created by the Agreement without the prior consent and written approval of the Client's <Executive Director> or designee and the Vendor.

### **5.22 Vendor as Independent Contractor**

It is expressly agreed that the Vendor is an independent contractor and not an agent of Client. The Vendor shall not pledge or attempt to pledge the credit of Client or in any other way attempt to bind the Client.

The relationship of the Vendor to the Client shall be that of independent contractor and no principal agent of employer-employee relationship is created by the Agreement.

### **5.23 Advertisement**

Vendor shall not use, in its external advertising, marketing programs, or other promotional efforts, any data, pictures, or other representation of the Client unless Vendor receives specific written authorization in advance from the Client's <Executive Director>. Vendor will limit and direct any of its advertising on the Client's premises and shall make arrangements for such advertising through the <Executive Director>. Vendor shall not install any signs or other displays within or outside of the Client's premises unless in each instance the prior written approval of the Client's <Executive Director> has been obtained. However, nothing in this clause shall preclude Vendor from listing the Client on its routine client list for matters of reference.

### **5.24 Pricing**

All prices for Vendor's Software and Services hereunder are firm for the term of the Agreement. The Client shall pay Vendor for satisfactory performance of the Software and Services specified in this Agreement, the sums in accordance with Vendor's response to Client's RFP, this Agreement and any related addenda. Client reserves the right to delay the purchase of Software components ("Modules") and related Services. The Modules subject to this price protection are included in Exhibit <##>.

### **5.25 Right to Withhold Payment**

If the Vendor breaches any provision of this Agreement, the Client shall have a right to withhold all payments due to the Vendor until such breach has been fully cured.

### **5.26 Funding Out**

This Agreement shall terminate at such time, if any, that the City Council fails to appropriate sufficient sums in the budget year for which the Agreement applies to pay the amount due.

### **5.27 Non-Collusion**

Vendor hereby represents and agrees that it has in no way entered into any contingent fee arrangement with any firm, employee of the Client, or other person or entity concerning the obtaining of this Agreement. In addition, Vendor agrees that a duly authorized Vendor representative will sign a non-collusion affidavit, in a form acceptable to Client that Vendor has not received from Client any incentive or special payments, or considerations not related to the provision of the Software and Services described in this Agreement.

### **5.28 Conflict of Interest**

The Vendor shall not employ as a director, officer, employee, agent, or subcontractor any elected or appointed official of the Client or any member of his/her immediate family. Additionally, Vendor will comply with all City of Waco conflict of interest restrictions, including the City Charter.



### **5.29 Vendor Merger or Acquisition**

In the event that the Vendor is merged or acquired, the acquiring entity shall honor all of the terms of the existing contract for 5 years or until the end of the present Agreement term, whichever is longer.

### **5.30 Equal Opportunity Employment/Nondiscrimination Policy**

It is the policy of the Client that all vendors who provide goods and services to the Client by contract, shall, as a condition of providing goods and services, adhere to all Federal, State and Local laws, ordinances, rules and regulations, and policies, and if applicable, prohibiting discrimination in regard to persons to be served and employees and applicants for employment including, but not limited to, the following:

- The Elliott-Larsen Civil Rights Act, 1976 PA 453, as amended.
- The Persons with Disabilities Civil Rights Act, 1976 PA 220, as amended.
- Section 504 of the Federal Rehabilitation Act of 1973, PL 93-112, 87 Stat 355, as amended, and rules adopted thereunder.
- The Americans with Disabilities Act of 1990, PL 101-336, 104 Stat 327 (42 USCA § 12101 et seq.), as amended, and regulations promulgated thereunder.

Vendor shall, as a condition of providing Software and Services, as required by law and/or the Client's Equal Opportunity Employment/Nondiscrimination Policy, not discriminate against persons to be served or an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment because of race, color, religion, sex, gender identity or expression, sexual orientation, national origin, age, disability, genetic information, pregnancy, veteran status, or any other legally protected status under applicable federal, state, and local laws.

Where there has been a conclusive finding that Vendor has violated Federal, State, or Local equal opportunity statutes, ordinances, rules/regulations, or policies, Vendor shall be barred from providing goods and services to the Client for 10 years from the date that a determination of the violation has been made in accordance with applicable statutes, ordinances, rules/regulations, or policies or from the date that such determination becomes known, unless a specific exemption is granted by the Client's governing body.

Any violation of Federal, State, or Local equal opportunity statutes, ordinances, rules/regulations, or policies during the course of time during which Vendor is providing Software or Services to the Client shall be regarded as a material breach of the Agreement between the Client and the Vendor, and the Client may terminate such Agreement effective as of the date of delivery of written notification to the Vendor.

Any employee of Vendor providing goods and services to the Client under his Agreement, or any employee of a subcontractor of Vendor providing goods and services to the Client under this Agreement, or any bona fide organization representing such employees may file a written complaint with the governing body or its designated agent, if any, challenging the compliance by Vendor with

the terms of this policy, the governing body or its designated agent shall then conduct an investigation to determine whether the policy has been violated.

Any Vendor found to have retaliated in violation of a Federal or State law against an employee for filing a claim of violation of Federal, State, or Local equal opportunity statutes, ordinances, rules/regulations, or policies shall be ineligible to provide any goods or services to the Client for a period of 20 years from the date of such finding.

## **Software**

### **5.31 Grant of Right to Use Software**

Vendor hereby grants to Client a nonexclusive, nontransferable, [perpetual license][subscription] to use the Software described in Exhibit <##> solely for internal business purposes on a central processing unit owned, leased or otherwise used by Client and/or its designated service provider.

### **5.32 Documentation**

Vendor shall deliver to Client 2 complete copies of the user documentation describing the functionality and operation of the Software and technical documentation describing the technical support procedures to assist with the on-going support of the Software ("Documentation"), including an electronic version with the ability to modify to the needs of Client. Vendor agrees that Documentation provided with the Software will be updated to reflect any Customizations contracted by Client with Vendor. Client shall have the right to make as many additional copies of the Documentation for its own use as it may determine.

### **5.33 Software Warranty**

- A. Vendor represents and warrants that it has the right to grant the [licenses][subscription] set forth under this Agreement. Vendor further represents and warrants that it has good and marketable title to the Software described herein free and clear from all liens, encumbrances, and claims of infringement of patent, copyright, trade secret or other proprietary rights of third parties. Vendor further represents and warrants that neither the Software in the form delivered by Vendor to Client, nor any modifications, enhancements, updates or upgrades thereto, nor the normal use thereof by Client, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any third party.
- B. In the event that any third party makes a claim or files a lawsuit challenging Client's right to use the Software, Vendor shall defend and indemnify Client and hold it harmless for any and all losses, liabilities, judgments, damages, awards and costs (including legal fees and expenses) arising out of said claim or lawsuit, and for any monies paid in settlement thereof. Client shall have the absolute right to participate in any litigation at Client's own expense. In resolving any such infringement claim, Vendor shall, in its reasonable discretion, either procure a license or other right to enable Client to continue to use the Software or develop or obtain a non-infringing substitute acceptable to Client at Vendor's cost.
- C. Vendor represents and warrants that the Software and related products as described with this Agreement will perform in accordance with all Documentation, Contract Documents, Vendor marketing literature, and any other communications attached to or referenced in this Agreement.
- D. Vendor represents and warrants that the Software and related products, including all modifications contracted under the terms of this Agreement, will meet the requirements of Client as set forth in the Contract Documents.

- E. Client has: (i) presented detailed technical specifications of the particular purpose for which the Software is intended, (ii) provided detailed descriptions and criteria of how the Software can be defined to accomplish particular purpose, and (iii) defined the exact procedures and techniques to be employed in testing whether the Software has achieved the defined performance of this particular purpose. Given this advanced preparation concerning, and documentation about, Client's particular purpose, Vendor, at the time this Agreement is in force, has (#) reason and opportunity to know the particular purpose for which the Software is required, (#) that Client is relying on Vendor's experience and knowledge of the Software to identify those components which are most suitable and appropriate, and (#) that Client is relying on Vendor's experience and knowledge to identify the appropriate Services that will assist in making the Software operational. Therefore, Vendor warrants that the Software including all products included in this Agreement are fit for the purposes for which they are intended as described in the Contract Documents.

### **5.34 Patents, Copyrights, and Proprietary Rights Indemnification**

The Vendor, at its own expense, shall completely and entirely defend the Client from any claim or suit brought against the Client arising from claims of violation of United States patents or copyrights resulting from the Vendor or the Client's use of any equipment, technology, documentation, and/or data developed in connection with the Services and Software (together the Solution) described in this Agreement. The Client will provide the Vendor with a written notice of any such claim or suit. The Client will also assist the Vendor, in all reasonable ways, in the preparation of information helpful to the Vendor in defending the Client against this suit.

In the event that the Client is required to pay monies in defending such claims, resulting from the Vendor being uncooperative or unsuccessful in representing the Client's interest, or in the event that the Client is ordered to pay damages as a result of a judgment arising out of an infringement of patents and/or copyrights, Vendor agrees to fully reimburse the Client for all monies expended in connection with these matters. The Client retains the right to offset against any amounts owed Vendor any such monies expended by the Client in defending itself against such claims.

Should a court order be issued against the Client restricting the Client's use of any portion of the Software related to the claim and should the Vendor determine not to further appeal the claim issue, at the Client's sole option the Vendor shall provide, at the Vendor's sole expense, the following:

- A. Purchase for the Client the rights to continue using the contested Software or portions thereof which may include purchase of a third party software product, or
- B. Provide substitute software products and related services to the Client which are, in the Client's sole opinion, of equal or greater quality, or
- C. Refund all monies paid to the Vendor for the Solution subject to the court action. The Vendor shall also pay to the Client all reasonable losses related to the Solution and for all reasonable expenses related to the installation, implementation and conversion to the new Solution.

### **5.35 Unlimited Liability for Software Vendor Infringement**

The Vendor will reimburse Client for all costs related to infringement (not "finally awarded"). There shall be no limit of liability on behalf of the Vendor if the Software is determined to be infringing.

### **5.36 Password Security**

The Vendor warrants that no 'back door' password or other method of remote access into the Software code exists. The Vendor agrees that any and all access to any Software code residing on the Client's client/server must be granted by the Client to the Vendor, at the Client's sole discretion.

### **5.37 Software Interfaces**

Client has the right to develop interfaces to, and/or database applications that integrate with, the licensed Software using Vendor's recommended database and development tools without voiding the terms or warranties herein.

### **5.38 Source Code Escrow**

Vendor shall place Source Code for the Software modules licensed by the Client in escrow with an independent third-party (with whom a separate Escrow Agreement will be entered into by Vendor at no additional cost to Client). The Source Code shall be kept current with the releases and versions of the Software in live use at the Client. The Source Code shall revert to Client for Client's use if Vendor files for bankruptcy or protection from creditors in a court of law. Client shall then have full rights to use source code for any purposes other than resale.

Vendor will provide appropriate source code to the Client in a timely manner in the event that the Vendor goes out of business or no longer supports the Software being licensed. The same applies if the Vendor is merged or acquired and the Software is no longer supported. Once the Client obtains the source code, it will be a perpetual license, and there will be no additional fees due, even if additional licenses are deployed.

### **5.39 Right to Outsource**

Software [licensed][subscribed] to Client may be used by a third-party vendor hired by Client to perform outsource services on Client's behalf.

### **5.40 Use of Software by Personnel Who Are Not Employees**

Client's consultants, contractors, external customers, and business partners may access and use the Software under the Client's direction.

### **5.41 Disaster Recovery & Disaster Recovery Testing**

There will be no additional software costs to process at another site in the event of a disaster that shuts down the primary location where the Software is hosted or for testing at the disaster recovery site.

### **5.42 Disclaimers and Limitations of Remedies**

- A. Except as specifically stated in the Warranty section of this Agreement, the Software is provided "as is" without warranty of any kind, other than expressed or implied herein. In no event shall Vendor be liable for any indirect, special or consequential damages unless as otherwise stated herein, including, but not limited to, loss of anticipated profits, revenue or

savings, arising from the use of or inability to use the Software or breach of any implied warranty, even if Vendor or its agent has been advised of the possibility of such damages.

- B. In the event that the parties are unable to resolve differences, and after exhausting the terms and conditions of the Non-Performance Escalation Procedures clause herein, that may arise relating to this Agreement, all disputes arising from this Agreement shall be resolved through the courts of Waco, Texas, unless both parties agree to non-binding mediation, which shall take place in Waco, Texas. If mediation is agreed to, the mediation shall be governed by the most recently published rules of a nationally recognized mediation association as agreed to by both parties. Both parties agree to submit disputes to a single mediator acceptable to both parties. The mediator will be selected from a list compiled by the parties' respective legal counsels. Every person named on the list of potential mediators must be a neutral and impartial lawyer who has at least xxxxx years specializing in the field of general commercial litigation and is knowledgeable about software. The mediator shall base its award on applicable law and judicial precedent and unless both parties agree, otherwise shall include in such award the finding of fact and conclusions of law upon which the award is based. Judgment on the award rendered by the mediator may be entered in any court having jurisdiction thereof.

### **Software License**

*This Software License section will only apply if a license is granted by the Vendor in either a hosted or on-premises scenario.*

#### **5.43 Replication of Software**

Client shall not copy Software for any purposes other than for back up, disaster recovery and/or testing.

#### **5.44 Risk During Software Installation**

Delivery of the Software shall be made in accordance with the Project Schedule referenced as part of this Agreement. Minor variances from this Project Schedule may be permitted subject to a mutual agreement by both parties and confirmed by prior written notice. The Software shall be installed and placed into good working order by representatives of the Vendor. During the time period where the Software is in transit and until the Software is fully installed in good working order, the Vendor and its insurer shall be responsible for the Software and relieve the Client of responsibility for all risk or loss or damage to the Software. In addition, Vendor shall hold the Client and its officers, employees and agents harmless from any risk of loss or damage arising out of occurrences during the installation of the Software.

#### **5.45 Warranty Pertaining to Hardware Recommendation**

Vendor represents and warrants that all Software provided under this Agreement are compatible with and certified for use and operation in Client's operating environment. Furthermore, Vendor acknowledges that it has reviewed the hardware system ordered by Client and represents and warrants that such hardware system as defined in Exhibit <##> is sufficient for Client's current and reasonably projected use, including account and transaction volumes.

#### **5.46 Payment Terms – Software License**

It is expected that certain payments will be made to Vendor by Client upon delivery of the Software with additional payments made for Software and Services based on specific project milestones as defined in the Project Schedule.

Vendor shall invoice **Client** for the Total Amount on Exhibits <##> and <##> according to the following payment schedules:

##### **Software License Fees**

- 0% Due upon Contract Execution
- Actual costs Due upon initial Software installation
- Actual costs Due in installments based upon Conditional Acceptance of each Software Module
- Final cost Due upon Final Acceptance

Vendor shall submit to the Client an invoice in a form agreeable to the Client. The invoice shall be accompanied by such supporting documentation as required by the Client.

#### **Software Maintenance and Support**

##### **5.47 Extended Services**

For as long as Client pays the [maintenance and support][subscription] fees (“Annual Fees”) delineated in Exhibit <##>, Vendor will provide Client with maintenance and support services (“Extended Services”) with respect to the Software. Such Extended Services shall consist of the following:

- A. Vendor shall provide maintenance for the Software necessary to insure its operation in material conformance with all Documentation, Contract Documents and all representations and warranties set forth herein.
- B. Vendor shall provide Client with any revisions, updates and enhancements of the Software, together with related documentation, during the period in which enhancement and support services under this Agreement are furnished.
- C. Vendor agrees that the rates specified for Extended Services shall remain in effect for a period of minimally two (2) years from initial contract signing.
- D. Vendor agrees not to assign its Extended Services obligations as contemplated herein, without prior written authorization of Client, which will not be unreasonably withheld. Vendor will not utilize subcontractors for any Extended Services provided herein without the express written authorization of Client.

##### **5.48 Annual Fees**

- Annual Fees shall not be increased by an annual average percentage greater than the annual Consumer Price Index (CPI) for the Texas region, for as long as Annual Fees are paid and this agreement between the Client and the Vendor is in effect.
- 
- Vendor agrees to send an itemized invoice to the Client at least 90 days before Extended Services is up for renewal.

#### **5.49 Resolution and Response Time Warranty**

Vendor warrants that all Resolution and Response Times delineated below shall be adhered to as follows:

Priority 1 support issues are defined as: Mission Critical – Software is down /undiagnosed but feared critical; situation may require a restore and Software use is suspended until a diagnosis is given.

- Response to first call time limit – within 1 business hours.
- Resolution time limit – Vendor shall use its best efforts to resolve within xxxxx business days.
- If Vendor and Client are on a support telephone call to resolve a Priority 1 support issue at the time that normal support hours end, Vendor support representatives will remain on the call past the normal support hours to provide what assistance can be provided at no additional cost. Client acknowledges that programmers will not be available at that time.
- Penalty for not adhering to time limits - Client shall receive a 50% credit against the Annual Fees, per incident.

Priority 2 support issues are defined as: Critical Issue – Software is not down, but operations are negatively impacted.

- Response to first call time limit – within 2 business hours.
- Resolution time limit – Vendor shall use its best efforts to resolve within 2 business days.
- Penalty for not adhering to time limits - Client shall receive a 50% credit against the Annual Fees, per incident.

Priority 3 support issues are defined as: Non-Critical Issue – resolution period to be mutually agreed upon.

- Response to first call time limit – within 4 business hours.
- Resolution time limit – Vendor shall use its best efforts to resolve within 2 business days.
- Penalty for not adhering to time limits - Client shall receive a 50% credit against the Annual Fees, per incident.

#### **5.50 Termination of Annual Maintenance and Support**

- Client may cancel Extended Services upon 30 day notification to the Vendor.
- 
- Extended Services may be reinstated by the Client at an amount not to exceed the back fees that would have been due if Extended Services had not been dropped. In the event of reinstatement of Extended Services, the Client shall not be forced to move to a new [license][subscription] model.
- 
- The Vendor shall give the Client at least 3 months' notice before unilaterally canceling Extended Services. In addition, the Vendor shall continue to support the Software as long as it is supporting such Software for other customers of Vendor.

### **5.51 Federally Mandated Changes**

Vendor shall supply Client with all federally mandated changes to Vendor's Software. Vendor will make a good faith effort to provide Client with these changes within 30 days of their enactment dates prescribed by the aforementioned bodies. In the event that Vendor is unable to supply these changes within 30 days of the enactment, Client will be credited a prorated share of the Annual Fees for every week Vendor is tardy in delivering the required change.

### **5.52 Future Releases/Upgrades**

Client shall be entitled to future releases and upgrades, whether of a "minor" or major" nature, of Software for no additional cost beyond the Annual Fees delineated in Exhibit <##>.

### **5.53 Solution Longevity**

The Vendor certifies that the Software will remain available and fully supported by Vendor for a minimum of xxxxx (##) years from the date the Agreement is signed and that any material changes to Vendor's company or products will not affect the Client's implementation or Extended Services of the Software as long as Client pays the Annual Fees.

### **5.54 Successor Software Products**

In the event Vendor makes available successor software products with substantially similar functionality as the Software which may be based on a new technical architecture ("Successor Products") within xxxxx (##) years of contract signing, Client may transfer the [license][subscription] for the Software to the Successor Products for no additional Vendor [license][subscription] fees. In such event, Client shall pay the then-current Annual Fees for the Successor Products, in addition to any services and/or third party fees associated with the Successor Products.

### **5.55 Functionality Replacement**

The Client maintains the rights to the Software functionality that is [licensed][subscribed to] herein, even if that functionality later gets renamed or re-bundled by Vendor.

### **5.56 Continuity of Warranty**

Client may continue the Software Warranty protection by purchasing and paying for Extended Services described herein. By doing so, all Software Warranty, Year 200 Warranty, and Resolution and Response Time Warranty conditions included herein shall remain in effect, in perpetuity, as long as payments for Annual Fees are kept current.

### **5.57 Payment Terms – Annual Fees**

Vendor shall invoice **Client** for the Total Amount on Exhibits <##> and <##> according to the following payment schedule:

#### **Annual Fees**

- First year Annual Fees due upon Final Acceptance
- Subsequent Annual Fees due annually on anniversary of Final Acceptance



Vendor shall submit to the Client an invoice in a form agreeable to the Client. The invoice shall be accompanied by such supporting documentation as required by the Client.

## **Professional Services**

### **5.58 Intellectual Property**

All information, data, programs, publications and media created specifically for and paid for by the Client or as a result of the Services identified in this Agreement is the property of the Client unless otherwise noted, copyright protected, or defined or agreed to by both parties to this Agreement.

### **5.59 Contract Extension**

If Vendor anticipates missing a milestone date identified in the Project Schedule, then Vendor must notify Client immediately so that a mutually acceptable revised milestone date can be agreed to. Such revisions will not alleviate Client's right to Liquidated Damages in the event such a delay is caused by Vendor resulting in a delay of the Go Live date as defined in Project Schedule.

### **5.60 Subcontractors**

Vendors may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Vendor must obtain written prior approval from the Client for activities or duties to take place at the Client site. In using subcontractors, the Vendor agrees to be responsible for all of their acts and omissions to the same extent as if the subcontractors were employees of the Vendor.

### **5.61 Control of Sub-Contractor, Project Team and Project Manager Designation**

The Vendor understands that the successful installation, testing, and operation of the Software that is the subject of this Agreement shall be accomplished by a cooperative effort. To most effectively manage this process, the Vendor shall designate a single representative to act as an ex-officio member of the Client's project management team ("Project Manager") and who shall have the authority to act on behalf of the Vendor on all matters pertaining to this Agreement.

Client shall have the right to approve all subcontractors, Project Manager, and staff assigned to Client by Vendor ("Designated Staff"). In the event that a Designated Staff of the Vendor is, in the opinion of the Client, uncooperative, inept, incompetent, or otherwise unacceptable, the Vendor agrees to remove such person from the project. In the event of such a removal, the Vendor shall, within 30 days, fill this representative vacancy as described above. Regardless of whom the Vendor has designated to fill this representative vacancy, the Vendor organization remains the ultimate responsible party for performing the tasks and responsibilities presented in this Agreement.

### **5.62 Project Schedule and Acceptance**

Vendor will develop a detailed project schedule that details both Vendor and Client's responsibilities, timeline for project activities, phases, milestones, and deliverables ("Project Schedule") in connection with Vendor's performance of the Services. The Project Schedule should be in sufficient detail to specify the deliverables, conversion, training, testing, acceptance, configuration, modification, integration, and live operation activities. Both Vendor and Client agree that a mutually

agreeable Project Schedule will be submitted and approved by Client within 20 days of the date the Agreement is signed by both parties ("Effective Date"). In the event Vendor is unable to provide the Project Schedule within 20 days, Client will have at its option, the ability to terminate the Agreement and obtain all fees paid to Vendor. The Project Schedule will also include the criteria by which the software will be tested and accepted by Client.

### **5.63 Programming Services**

Client may during the implementation period or thereafter require modifications, interfaces, conversion, report writing, etc., services from Vendor ("Customizations"). Vendor agrees to provide a written Change Order describing the work to be performed and estimating the costs for Client approval before any work is initiated by Vendor. Vendor will not exceed the costs set forth in the mutually agreed to Change Orders without justification, in writing, that is acceptable to the Client. No costs in excess of the estimates will be paid by Client unless approved in writing in advance of fee incurrence. All Customizations shall be subject to Acceptance Testing before payment is released by the Client. Acceptance of the Customizations resulting from each Change Order shall be per the Acceptance Testing clause herein.

### **5.64 Acceptance Testing**

For purposes of acceptance of the Solution (or portions thereof), the parties intend to use the following staged acceptance procedure. All timeframes specified in the following procedures may be overridden by the Project Schedule.

- A. Written Deliverable: Vendor may submit interim drafts (stamped, noted or otherwise clearly marked "Draft") of a written deliverable to Client for review. Client agrees to review and provide comments to Vendor on each interim draft within 10 business days after receiving it from Vendor. Client will have the opportunity to review the written deliverable for an acceptance period of business days after delivery of the final version (stamped, noted or otherwise clearly marked "Final Draft") of the written deliverable (the "Acceptance Period"). Client agrees to notify Vendor in writing by the end of the Acceptance Period either stating that the written deliverable is accepted in the form delivered by Vendor or describing in reasonable detail any substantive deficiencies that must be corrected prior to acceptance of the written deliverable. If Vendor does not receive any such deficiency notice from Client by the end of the Acceptance Period, the written deliverable will be deemed to be accepted and an approved document marked "Approved" and dated will be provided to Client. If Client delivers to Vendor a timely notice of deficiencies and the items specified in the notice are deficiencies, Vendor will promptly correct the described deficiencies and return to Client for Acceptance. Client will not unreasonably withhold, delay or condition its approval of a final written deliverable.

Vendor is responsible for tracking status of each deliverable including but not limited to the date in which it was submitted to the Client and date returned.

- B. Software Deliverable: Acceptance testing is an iterative process designed to determine whether each component of the Software combined with related Services delivered by Vendor ("Software Deliverable") performs the functions described in the Contract Documents and to discover and remove material deviations where the Software Deliverable does not substantially perform the functions described in the Contract Documents ("Defects") through repeated testing cycles. In the event of conflicts between

Contract Documents and Application Software Documentation the Contract Documents will prevail.

Vendor will work with the Client and make a good faith effort to develop a test plan with the requisite details, understanding the level of detail required may change depending on the complexity of the requested Software Deliverable and to test each Software Deliverable (the "Acceptance Tests" or "Acceptance Testing").

1. The "Acceptance Test Period" for each Software Deliverable will be xxxxx (##) business days unless an alternate time is mutually agreed upon between Vendor and Client per the Project Schedule. The Acceptance Test Period for each Software Deliverable will start within xxxxx (#) business days, unless an alternate start date is mutually agreed upon by Vendor and Client per the Project Schedule, after the Software Deliverable is installed at Client's designated site and Vendor has successfully completed Vendor's installation test and notified Client that the Software deliverable is "Ready for Acceptance Testing." Vendor will not be obligated to deliver a Software Deliverable to Client until Client demonstrates the readiness of the target technical platform and environment.

2. If Client determines during the Acceptance Test Period that the Software Deliverable contains a Defect, Client will promptly send Vendor a written notice reporting the alleged Defect describing it to Vendor in sufficient detail reasonably necessary for Vendor to recreate it. Vendor will modify the Software Deliverable to remove the reported Defect and will provide the modifications to Client for re-testing. Client will then re-test the modified portions of the Software Deliverable promptly after receiving the modifications from Vendor. In such a case, Vendor and Client will mutually agree upon an updated Acceptance Test Period.

3. By the end of the Acceptance Testing Period Client will provide Vendor with a final written list reporting any outstanding Defects (the "Punch List"). Client will then have xxxxx (##) business days after the receipt of the modifications to re-test the modified Software Deliverable to confirm that the Defects that were reported on the Punch List have been removed. If any Defects that were reported on the Punch List have not been removed, Client will provide Vendor with written notification by the end of the retesting period reporting any such Defects. In such event, the procedures set forth in this section will be repeated for the remaining Defects on the Punch List.

4. Vendor and Client each agrees to work diligently to achieve acceptance of Software Deliverable at the earliest possible date.

C. "User Acceptance Testing" shall mean testing of each Phase identified in the Project Schedule using the process defined above for Software Deliverable.

D. "Conditional Acceptance" will occur upon the earlier of correction of Defects reported as part of User Acceptance Testing of the Phase, or Go-Live of the Phase. There will be a Conditional Acceptance for each Phase; Conditional Acceptance after the final Phase constitutes Conditional Acceptance of the entire Solution. Unless the Project Schedule determines otherwise, the Acceptance Test Period for User Acceptance Testing will be xxxxx (##) calendar days, Vendor and Client will work diligently to put the Phase into Go Live operations.

E. "Final Acceptance" involves use of the Solution in totality in production operations for a period of xxxxx (##) calendar days, provision of all Services by Vendor, and completion of the Phases and/or the Software previously tested and meeting Conditional Acceptance.

If after xxxxx (##) calendar days the Solution performs without Defects, the Client and the Vendor will both issue and execute a "Final Acceptance" of the Solution. The xxxxx (##) day time frame for Final Acceptance will stop if Defects are found during production use and prevent further production use of the Software. The Final Acceptance process will resume on the date the Defect is confirmed as fixed and will continue for the remainder of the Xxxxx (##) day time frame. There will be a Final Acceptance for each Phase; Final Acceptance after the final Phase constitutes Final Acceptance of the entire Solution.

#### **5.65 Professional Services Warranty**

- A. Vendor agrees at all times to maintain an adequate staff of experienced and qualified employees for efficient performance under this Agreement. Vendor agrees that, at all times, the employees of Vendor furnishing or performing any services shall do so in a proper, workmanlike, and dignified manner.
- B. Vendor agrees that all persons working for or on behalf of Vendor whose duties bring them upon the Client's premises shall obey the rules and regulations that are established by the Client and shall comply with the reasonable directions of the Client's officers. The Client may, at any time, require the removal and replacement of any of Vendor's employees for good cause.
- C. Vendor shall be responsible for the acts of its employees and agents while on the Client's premises. Accordingly, Vendor agrees to take all necessary measures to prevent injury and loss to persons or property located on the Client's premises. Vendor shall be responsible for all damages to persons or property caused by Vendor or any of its agents or employees. Vendor shall promptly repair, to the specifications of the Client, any damage that it, or its employees or agents, may cause to the Client's premises or equipment; on Vendor's failure to do so, the Client may repair such damage and Vendor shall reimburse the Client promptly for the cost of repair.
- D. Vendor agrees that, in the event of an accident of any kind, Vendor will immediately notify the Client's contact person and thereafter, if requested, furnish a full written report of such accident.
- E. Vendor shall perform the services contemplated in the Agreement without interfering in any way with the activities of the Client's staff or visitors.
- F. Vendor and its employees or agents shall have the right to use only those facilities of the Client that are necessary to perform services under this Agreement and shall have no right to access any other facilities of the Client. The Client shall also extend parking privileges to properly identified members of Vendor's full-time staff on the same basis as they are extended to the Client's staff.
- G. The Client shall have no responsibility for the loss, theft, mysterious disappearance of, or damage to equipment, tools, materials, supplies, and other personal property of Vendor or its employees or subcontractors.

#### **5.66 Ineffective Training**

Vendor will submit to Client an agenda in advance of any training sessions to be covered with the key materials provided during the course of the training. Further, Vendor will provide to Client details associated with the layout of the training facility, computer requirements, as well as all associated media necessary to deliver the course. Client will conduct a rating of the course after its completion and communicate the results of this rating to Vendor for future class improvements. In the event that Client asserts in good faith that any Vendor training consultant lacks the skill or capacity to adequately train Client's staff, Vendor shall replace such training consultant as soon as reasonably possible. If Client notifies Vendor within 20 business days of the completion of said

training, that in Client's reasonable judgment the training sessions provided by such training consultant were inadequate or ineffective, then Vendor shall provide a credit in training days to Client for all such training sessions.

#### **5.67 Subcontracts**

The Vendor agrees not to subcontract any of the work required by this Agreement without the prior written approval of the Client's <Executive Director> or designee. The Vendor agrees to be responsible for the accuracy and timeliness of the work submitted in the fulfillment of its responsibilities under this Agreement.

#### **5.68 Non-Performance Escalation Procedures**

In the event that the Client determines that Vendor is not performing in a manner consistent with the intent and spirit of this Agreement or in a manner consistent with commonly accepted business practices, then the Client shall have the right to, in the sequence shown: (a) formally notify Vendor of non-performance, (b) reserve the right to withhold any and all payments pending, including support and maintenance fees, until the non-performance is corrected, (c) request a joint meeting of Vendor and Client decision makers to attempt to resolve the non-performance, (d) require a Vendor employee to be on-site at Client's location until the non-performance is resolved, (e) request mediation in Waco, Texas per terms of the a mediation association or at Client's sole option, commencing suit in the Waco, TX <Court Name>, the venue of which is agreed to by Vendor, (f) invoke the Termination clause herein.

#### **5.69 Force Majeure Clause**

Timely performance is essential to the successful initial implementation and ongoing operation of the network described herein. However, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by force majeure.

#### **5.70 Force Majeure Requisites**

Force majeure shall not be allowed unless:

- A. Within fifteen (15) calendar days of the occurrence of force majeure, the party whose performance is delayed thereby shall provide the other party or parties with written notice explaining the cause and extent thereof, as well as a request for a time extension equal to the estimated duration of the force majeure events.
- B. Within fifteen (15) calendar days after the cessation of the force majeure event, the party whose performance was delayed shall provide the other party written notice of the time at which force majeure ceased and a complete explanation of all pertinent events pertaining to the entire force majeure situation.

#### **5.71 120 Day Maximum**

Under no circumstances shall delays caused by a force majeure extend beyond one hundred-twenty (120) days from the scheduled delivery or completion date of a task, unless by prior [to the end of the one hundred-twenty (120) day period] written approval is received from the other party. Failure

to secure this written prior permission, even in the case of force majeure, shall constitute default by the party failing to meet the requirement.

### **5.72 Right of Cancellation**

Either party shall have the right to cancel the Agreement if force majeure suspends performance of scheduled tasks by xxxxx or more parties for a period of xxxxx (#) or more days from the scheduled date of the task. If a cancellation due to a force majeure occurs before title passes to the Client, the Vendor may keep any parts of the system as it can salvage, but must remove same at its own expense. If cancellation occurs due to a force majeure after title passes to the Client, the system shall remain with the Client and the Vendor shall be entitled to any such payments as have accrued according to the payment schedule.

### **5.73 Liquidated Damages**

Failure on the part of the Vendor to complete critical project milestones as established in the Project Schedule may result in liquidated damages being imposed on the Vendor by the Client for breach of contract and for non-compliance. The milestones will be defined in the Project Schedule and extent of damages will be <\$1,000> per day for each day the project Go Live date as defined in the Project Schedule is extended.

### **5.74 Change Orders**

The Project Managers appointed pursuant to this Agreement will meet periodically to review the Project Schedule. Changes to the scope of the project including additional Software and Services may be proposed by either party, and if accepted by the parties, the proposed changes shall be reduced to a written document, inclusive of any applicable pricing changes ("Change Order"). Written approval signed by a duly authorized representative of each of the parties of such Change Order must be obtained prior to the provision of any products or services related to such Change Order.

Vendor shall provide to Client a written quotation for any changes in this Agreement, including Software, Services, Customizations, etc. Each Change Order shall be reviewed and approved by Client, and shall be subject to the requirements in the section.

### **5.75 Travel Expense Reimbursement**

All travel expense costs must be included in the Vendor's fixed price cost. Client will not make a separate payment for reimbursable expenses. Per Force Majeure, Client shall not be liable for additional travel costs incurred due for any reason outside Vendor's control.

### **5.76 Video and Audio Recording**

Client reserves the right to record video and/or audio of any and all training sessions, whether held at Client site, Vendor site, or via teleconference. Use of such recordings shall be strictly for Client staff training purposes.

### **5.77 Payment Terms – Professional Services**

Vendor shall invoice **Client** for the Total Amount on Exhibits <##> and <##> according to the following payment schedules:

#### **Services**

- 85% Due in installments based on Conditional Acceptance of Milestones as defined in the Statement of Work
- 15% Due upon Final Acceptance

#### **Customizations**

- 10% Due as incurred upon completion of design
- 75% Due upon Conditional Acceptance of Customization
- 15% Due upon Final Acceptance

Vendor shall submit to the Client an invoice in a form agreeable to the Client. The invoice shall be accompanied by such supporting documentation as required by the Client.

### **Hosting Services**

*This Hosting Services section will only apply if hosting or subscription services are provided by the Vendor in either a hosted or software as a service scenario.*

#### **5.78 Hosting Services**

Vendor will provide hosting services consisting of system administration, system management, and system monitoring activities that Vendor performs for the Software, and includes the right to access and use the Software, resolving performance issues under the terms of the Service Level Agreement (SLA), client data storage, client data archiving and disaster recovery services (“Hosting Services”). Hosting Services do not include support of an operating system or hardware other than those used by Vendor at Vendor’s data centers to host and operate the Software, support outside of Vendor’s normal business hours, training, consulting or other professional services.

#### **5.79 Service Audits**

Hosting Services are audited at least yearly in accordance with the AICPA’s Statement on Standards for Attestation Engagements (“SSAE”) No. 16, Type 2. Vendor has attained, and will maintain, Type II SSAE compliance, or its equivalent, for so long as this Agreement is in effect. Upon execution of a mutually agreeable Non-Disclosure Agreement (“NDA”), Vendor will provide Client with a summary of Vendor’s SSAE-16 compliance report or its equivalent. Every year thereafter, for so long as the NDA is in effect and in which Client makes a written request, Vendor will provide that same information.

#### **5.80 Disaster Recovery**

Vendor has developed and implemented a business continuity/disaster recovery plan and will continue to maintain a commercially reasonable business continuity/disaster recovery plan for the term of this Agreement. As part of Vendor’s business continuity/disaster recovery program, Vendor has fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Software and Hosting Services in the event of a component or system failure or any other unplanned interruption of the Software or Hosting Services whether caused by a disaster or otherwise. In the event any of Client data has been lost or damaged due to an act or

omission of Vendor or its subcontractors or due to a defect in Software, Vendor will use best commercial efforts to restore all the data on servers in accordance with the architectural design's capabilities and with the goal of minimizing any data loss as greatly as possible. In no case shall the recovery point objective ("RPO") exceed a maximum of twenty-four (24) hours from declaration of disaster. For purposes of this subsection, RPO represents the maximum tolerable period during which Client data may be lost, measured in relation to a disaster Vendor declares, said declaration will not be unreasonably withheld. The Force Majeure provisions herein shall not limit Vendor's obligations under this section, meaning that, a Force Majeure event does not relieve Vendor of its obligation to implement its business continuity/disaster recovery plan to the extent it is able to do so in light of the Force Majeure event.

Vendor will test the business continuity/disaster recovery plan on an annual basis. Vendor's standard test is not client-specific. If Client requests a client-specific disaster recovery test, Vendor will work with Client to schedule and execute such a test on a mutually agreeable schedule.

### **5.81 Penetration Testing**

Vendor conducts annual penetration testing of the production network and/or web application. Vendor will maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. Vendor will provide Client with a written or electronic record of the actions taken by Vendor in the event that any unauthorized access to Client database(s) is detected as a result of Vendor security protocols. Further, Vendor recognize that Vendor is storing confidential Client data and any breach of security could have a detrimental impact on Client. The <Regulation> requires breach notification when residents' computerized personal information is accessed and acquired without authorization. In the event there is such a breach, Vendor will notify Client immediately while the issue is remediated, and all communications shall be coordinated with Client in conformance with applicable law. Vendor will indemnify Client for all costs reasonably incurred by Client due to a breach of security determined to be the result of Vendor's negligence, subject to the insurance limitations in the Agreement. Vendor will undertake an additional security audit, on terms and timing to be mutually agreed to by the parties, at Client's written request. Client may not attempt to bypass or subvert security restrictions in the Hosting Services or environments related to the Software. Unauthorized attempts to access files, passwords or other confidential information, and unauthorized vulnerability and penetration test scanning of Vendor network and systems (hosted or otherwise) is prohibited without the prior written approval of Vendor's IT Security Officer.

### **5.82 Back-up and Recovery**

Vendor will (i) execute nightly database backups to a backup server in a secure offsite location and (ii) save the last ##### nightly database backups in a secure offsite location. Client will have the ability to download any of the backups to Client's location. The Software shall be configured to perform incremental backups every ### hours, such that the database can be restored to the last committed transaction and/or point in time of the last incremental backup, which will have occurred up to two-hours earlier, in the event of a system failure.

Vendor will be responsible for importing back-up and verifying that Client can log-in to the Software. Client will be responsible for running reports and testing critical processes to verify the returned data. At Client's written request, Vendor will provide test results to Client within a commercially reasonable timeframe after receipt of the request.



### **5.83 Secure Data Transmission**

Vendor will provide secure data transmission paths from each of Client's workstations to Vendor's servers; all data transmission between Vendor's hosted environment and Client's environment shall be encrypted.

Vendor guarantees that all Client data that Vendor hosts will be located within the United States at all times.

### **5.84 Background Checks**

For at least the past ten (10) years, all of Vendor's employees have undergone criminal background checks prior to hire. All employees sign Vendor's confidentiality agreement and security policies. Vendor's data centers are accessible only by authorized personnel with a unique key entry. All other visitors must be signed in and accompanied by authorized personnel. Entry attempts to the data center are regularly audited by internal staff and external auditors to ensure no unauthorized access.

### **5.85 Client Notification if Third-Party Request for Data**

Unless the notification is specifically precluded by such law, lawful order, or government authority, as applicable, Vendor shall notify Client in the event that Vendor is required by law, lawful order of a court (including, without limitation, request for production of documents), or governmental authority to disclose Client data. In the event that Vendor is required to produce or disclose Client data, unless prohibited as set forth above, then Vendor shall provide Client with written notice of the request sufficiently in advance of the data specified for the production of the records so that Client can act to protect its data by, for example, seeking a protective order. In addition, to the extent permitted by law, Vendor shall not release the data pending the outcome of any measures taken by Client to contest, otherwise oppose, or seek to limit disclosure by Vendor.

### **5.86 Provision of Client Data upon Termination**

Upon termination or non-renewal of this Agreement, Vendor will promptly provide Client data to Client then residing in Vendor's hosted environment. The Client data shall be provided in ASCII or such other format as may be mutually agreed. Such Client data will be provided no later than sixty (60) days prior to the date of expiration or termination, as applicable, (provided at least 10 days advance notice by Client) and again seven (7) days after date of expiration or termination, as applicable.

### **5.87 Transition Services**

Upon expiration or termination of this Agreement, upon Client's request, Vendor will cooperate with Client and provide services that are reasonably necessary to effectuate an orderly transition to a new system, solution, or provider; provided that Client shall pay Vendor's then-current rates for such services. Such cooperation and services shall include assistance with data conversion and, at Vendor's option may include the provision of file layouts to Client on a confidential basis for the purpose of identifying the data Vendor provided to Client.

Data should be returned to the customer in both the SaaS vendor's native data format and a platform-agnostic format (e.g. MS SQL) with appropriate data schemas and dictionaries. Once a

successful hand-off of that data has been confirmed, all customer data should be permanently removed from all SaaS vendor servers.

### **5.88 Annual Hosting Fees**

- Annual Hosting Fees shall not be increased by an annual average percentage greater than the annual Consumer Price Index (CPI) for the <Region> region or xxxxx (3) %, whichever is less, for as long as Annual Hosting Fees are paid and this agreement between the Client and the Vendor is in effect.
- 
- Vendor agrees to send an itemized invoice to the Client at least 90 days before Extended Services is up for renewal.
- 

### **5.89 Payment Terms – Annual Hosting Fees**

Vendor shall invoice **Client** for the Total Amount on Exhibits <##> and <##> according to the following payment schedule:

#### **Annual Hosting Fees**

- First year Annual Hosting Fees due upon availability of Software
- Subsequent Annual Fees due annually on anniversary of availability of Software

Vendor shall submit to the Client an invoice in a form agreeable to the Client. The invoice shall be accompanied by such supporting documentation as required by the Client.

#### **Hosting Service Level Agreement**

*This Hosting Service Level Agreement section will only apply if hosting or subscription services are provided by the Vendor.*

### **5.90 Service Level Agreement Overview**

This Service Level Agreement (SLA) operates in conjunction with, and does not supersede or replace any part of, the Agreement, specifically, the Hosting Services Section. It outlines the information technology service levels that Vendor will provide to Client to ensure the availability of the application services and Software that Client has requested Vendor to provide. All other support services are documented in the Software Maintenance and Support Section.

### **5.91 Definitions**

Except as defined below, all defined terms have the meaning set forth in the Agreement.

*Attainment:* The percentage of time the Software is available during a calendar quarter, with percentages rounded to the nearest whole number.

*Client Error Incident:* Any service unavailability resulting from Client applications, content or equipment, or the acts or omissions of any of Client service users or third-party providers over whom Vendor exercises no control.

*Downtime:* Those minutes during which the Software is not available for Client use. Downtime does not include those instances in which only a defect is present.

*Service Availability:* The total number of minutes in a calendar quarter that the Software is capable of receiving, processing, and responding to requests, excluding maintenance windows, Client Error Incidents and Force Majeure.

## **5.92 Service Availability**

The Service Availability of the Software is intended to be 24/7/365. Vendor sets Service Availability goals and measures whether Vendor has met those goals by tracking Attainment.

A. Client Responsibilities: Whenever Client experiences Downtime, Client must make a support call according to the procedures outlined in the Software Maintenance and Support Section. Client will receive a support incident number. Client must document, in writing, all Downtime that Client has experienced during a calendar quarter. Client must deliver such documentation to Vendor within 30 days of a quarter's end.

The documentation Client provides must evidence the Downtime clearly and convincingly. It must include, for example, the support incident number(s) and the date, time and duration of the Downtime(s).

B. Vendor Responsibilities: When Vendor support team receives a call from Client that Downtime has occurred or is occurring, Vendor will work with Client to identify the cause of the Downtime (including whether it may be the result of a Client Error Incident or Force Majeure). Vendor will also work with Client to resume normal operations.

Upon timely receipt of Client's Downtime report, Vendor will compare that report to Vendor's own outage logs and support tickets to confirm that Downtime for which Vendor was responsible indeed occurred.

Vendor will respond to Client's Downtime report within 30 day(s) of receipt. To the extent Vendor has confirmed Downtime for which Vendor is responsible, Vendor will provide Client with the relief set forth below.

C. Client Relief: When a Service Availability goal is not met due to confirmed Downtime, Vendor will provide Client with relief that corresponds to the percentage amount by which that goal was not achieved, as set forth in the Client Relief Schedule below.

Notwithstanding the above, the total amount of all relief that would be due under this SLA per quarter will not exceed 100% of one quarter of the then-current Annual Fees. The total credits confirmed by Vendor in one or more quarters of a billing cycle will be applied to the Annual Fees for the next billing cycle. Issuing of such credit does not relieve Vendor of its obligations under the Agreement to correct the problem which created the service interruption.

Every quarter, Vendor will compare confirmed Downtime to Service Availability. In the event actual Attainment does not meet the targeted Attainment, the following Client relief will apply, on a quarterly basis:

Targeted Attainment	Actual Attainment	Client Relief
100%	99.5-100%	Remedial action will be taken.
100%	<99.49%	##% credit of Annual Fees paid for affected calendar quarter for each 1% by which Actual Attainment is less than ##%, such credit not to exceed Annual Fees actually paid in any circumstance. Credit for affected calendar quarter will be posted to next billing cycle.

Client may request a report from Vendor that documents the preceding quarter’s Service Availability, Downtime, any remedial actions that have been/will be taken, and any credits that may be issued.

D. Failure by Vendor to Meet Attainment Levels: In the event Vendor fails to achieve an Actual Attainment Level of ##% or greater for three (3) consecutive quarters, Client shall be entitled to terminate the Agreement on written notice to Vendor with no liability, obligation, or penalty to Client by reason of such termination. Without limitation, if Client terminates the Agreement pursuant to this Section, then any early termination penalties shall not apply. Alternatively, Client shall have the option to terminate the Agreement, without penalty, and to purchase perpetual licenses from Vendor for the Software to be hosted by Client in-house or by its designated hosting provider. If Client exercises this option, Client shall pay the then-current license fees for the Software, discounted ##% for each full year that this Agreement has been in force, with such discount, in no event, to exceed ##% of the list price for the Software so licensed. Client’s license rights are not otherwise expanded, Client may not modify the Software so acquired or use it for any other purpose than was provided for in this Agreement.

**5.93 Applicability**

The commitments set forth in this SLA do not apply during Vendor maintenance windows, Client Error Incidents, and Force Majeure. Vendor performs maintenance during limited windows that are historically known to be reliably low-traffic times. Vendor will not perform maintenance during normal business hours ( 7:30 am-8 pm CST, Mon - Fri). If and when maintenance is predicted to occur, Vendor will provide at least one week advance notice and will coordinate to the greatest extent possible with Client. The foregoing notwithstanding, Vendor reserves the right to provide maintenance without such advance notice if circumstances require immediate action; provided that any notice provided without such advance notice that occurs during normal business hours will count as Downtime for the purposes of this SLA.

**5.94 Force Majeure**

Client will not hold Vendor responsible for not meeting service levels outlined in this SLA to the extent any failure to do so is caused by Force Majeure. In the event of Force Majeure, Vendor will file with Client a signed request that said failure be excused. That writing will at least include the essential details and circumstances supporting Vendor’s request for relief pursuant to this Section. Client will not unreasonably withhold its acceptance of such a request.

## **6 Contract Terms and Conditions Compliance**

### **6.1 Contract Terms and Conditions Compliance Checklist**

Proposal responders are to mark the Comply, Exception, or Not Comply column and submit this checklist in section 12 of your response. Comply indicates the proposal responder understands and agrees to comply fully. Exceptions must be fully explained on the bottom portion of this page. The Client reserves the right to reject any proposal for non-compliance with any of the specifications.

#	Title	Comply	Exception	Not Comply
5.1	Scope of Agreement			
5.2	Incorporation by Reference			
5.3	Entire Agreement Clause			
5.4	Applicable and Governing Law Clause			
5.5	Wording Conflicts			
5.6	Standard Forms and Contracts			
5.7	Term and Termination Clause			
5.8	Indemnification			
5.9	Insurance			
5.10	Insurance Coverage			
5.11	Limitation of Liability			
5.12	Texas Public Information Act			
5.13	Confidentiality			
5.14	Title and Confidentiality			
5.15	Identification of Parties to the Agreement Clause			
5.16	Notices Clause			
5.17	Agreement Extension and Modification Clauses			
5.18	Changes in Agreement			
5.19	Survival Clause			
5.20	Effect of Regulation			
5.21	Assignments			
5.22	Vendor as Independent Contractor			
5.23	Advertisement			
5.24	Pricing			
5.25	Right to Withhold Payment			
5.26	Funding Out			
5.27	Non-Collusion			
5.28	Conflict of Interest			
5.29	Vendor Merger or Acquisition			
5.30	Equal Opportunity Employment/Nondiscrimination Policy			
5.31	Grant of Right to Use Software			
5.32	Documentation			
5.33	Software Warranty			
5.34	Patents, Copyrights, and Proprietary Rights			
5.35	Unlimited Liability for Software Vendor Infringement			
5.36	Password Security			

#	Title	Comply	Exception	Not Comply
5.37	Software Interfaces			
5.38	Source Code Escrow			
5.39	Right to Outsource			
5.40	Use of Software by Personnel who are Not Employees			
5.41	Disaster Recovery & Disaster Recovery Testing			
5.42	Disclaimers and Limitations of Remedies			
5.43	Replication of Software			
5.44	Risk During Software Installation			
5.45	Warranty Pertaining to Hardware Recommendations			
5.46	Payment Terms 0 Software License			
5.47	Extended Services			
5.48	Annual Fees			
5.49	Resolution and Response Time Warranty			
5.50	Termination of Annual Maintenance and Support			
5.51	Federally Mandated Changes			
5.52	Future Releases/Upgrades			
5.53	Solution Longevity			
5.54	Successor Software Products			
5.55	Functionality Replacement			
5.56	Continuity of Warranty			
5.57	Payment Terms – Annual Fees			
5.58	Intellectual Property			
5.59	Contract Extension			
5.60	Subcontractors			
5.61	Control of Sub-Contractor, Project Team and Project Manager Designation			
5.62	Project Schedule and Acceptance			
5.63	Programming Services			
5.64	Acceptance Testing			
5.65	Professional Services Warranty			
5.66	Ineffective Training			
5.67	Subcontracts			
5.68	Non-Performance Escalation Procedures			
5.69	Force Majeure Clause			
5.70	120 Day Maximum			
5.71	Right of Cancellation			
5.72	Liquidated Damages			
5.73	Liquidated Damages			
5.74	Change Orders			
5.75	Travel Expense Reimbursement			
5.76	Video and Audio Recording			
5.77	Payment Terms – Professional Services			
5.78	Hosting Services			
5.79	Service Audits			
5.80	Disaster Recovery			
5.81	Penetration Testing			

#	Title	Comply	Exception	Not Comply
5.82	Back-up and Recovery			
5.83	Secure Data Transmission			
5.84	Background Checks			
5.85	Client Notification if Third-Party Request for Data			
5.86	Provision of Client Data upon Termination			
5.87	Transition Services			
5.88	Annual Hosting Fees			
5.89	Payment Terms – Annual Hosting Fees			
5.90	Service Level Agreement Overview			
5.91	Definitions			
5.92	Service Availability			
5.93	Applicability			
5.94	Force Majeure			

**6.2 Contract Terms and Conditions – Exception Explanations**

For all items marked as “Exception” in the Agreement Terms and Conditions Compliance Checklist, a Vendor must fully explain the exception on the Exception Explanations form below. Please include this in section 12 of your response.

Exception Explanations		
#	Title	Explanation of Exception